

2018

# Town of Phippsburg Maine Ordinances

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**ANIMAL CONTROL ORDINANCE**  
**LICENSING AND CONTROL OF DOMESTICATED ANIMALS**  
**TOWN OF PHIPPSBURG, MAY 1999**  
**Amended through May 4, 2010**

1. **AUTHORITY:** This Ordinance is enacted in accordance with Title 7 Section 3950, and repeals in its entirety the "Animal Control Ordinance Licensing and Control of Dogs" dated May 16,1998.

2. **PURPOSE:** To require that all Domesticated Animals in the Town be kept under the control of their owners or owner's designee at all times so that they will not cause harm to persons, damage property, or create a nuisance.

3. **DEFINITIONS:** The following words, terms and phrases when used in this article, shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning.

**At Large:** shall mean off the premises of the animal's keeper and not under the control of any person whose personal presence and attention would reasonably control the conduct of the animal.

**Keeper:** means a person in possession or control of a dog or other animal. A person becomes the keeper of a stray domesticated animal, other than a dog or livestock, if the person feeds that animal for at least ten (10) consecutive days.

**Owner:** means a person owning, keeping or harboring a dog or other animal.

**Domesticated Animals:** shall mean any dog ,wolf hybrid, cat or ferret which resides on the keepers property.

**Dangerous dog:** shall mean a dog which has bitten a person who was not a trespasser with criminal intent on the keepers premises at the time of the incident; a dog which causes serious injury or death to another animal; or a dog which causes reasonable fear of bodily injury to a person acting in a peaceable manner outside the keepers premises.

**Nuisance:** shall mean loud, frequent or habitual barking, howling or yelping; the causing of unreasonable noise continuously for twenty (20) minutes or intermittently for one (1) hour or more, smell, litter, or property damage; the chasing of automobiles, bicycles, or other vehicles; or the persistent or frequent entry on school ground while school is in session. Nuisance shall be a separate offense from running at large even though some the elements of the offense may be the same.

4. **REGISTRATION AND IDENTIFICATION:** A dog or wolf hybrid which is at least six (6) months old must be licensed by its owner and wear a collar or harness to which is attached a valid license tag.

5. **PROOF OF IMMUNIZATION:** All domesticated animals shall have rabies vaccinations in accordance with the regulations established by current veterinary practice and vaccine specifications. All owners or owner's designees shall, at the request of a

humane agent, animal control officer or a law enforcement officer, show a current certificate of rabies vaccination.

A. Exception: If an owner applying for a license declares that the dog is a wolf hybrid, the requirement of rabies immunization shall be waved and the dog shall be treated in accordance with Title 22, chapter 251, subchapter V.

6. **RUNNING AT LARGE:** A dog, wolf hybrid or ferret is not permitted to run at large. A dog, wolf hybrid or ferret which is off the premises of the keeper and is not on a leash is prima facie evidence of running at large.

A. Exception: A dog which is under the control of the keeper may run at large while engaged in field trials, training or legal hunting.

7. **IMPOUNDING:** The animal control officer shall apprehend any domesticated animal found running at large, in as defined in paragraph 6, and impound it in the animal shelter or other suitable place. At that time he/she shall register the breed, color, sex, license number, and name and address or telephone number of the owner, if known, in a book kept for that purpose.

8. **NOTICE AND RECLAMATION:** The Animal Control Officer shall notify the owner as soon as practical, if known, in person or by certified mail that the domesticated animal has been impounded, and the owner must claim it within six (6) days, or twenty-four (24) hours for cats, of the day of impound by licensing the animal, if unlicensed but required to be, providing proof of rabies vaccination, and paying the town the following fees:

- |   |         |
|---|---------|
| (1) Cost of impounding and keeping the animal (1st offense) | \$30.00 |
| (2) Cost of keeping the animal (2nd & following offenses)   | \$50.00 |
| (3) Cost of notice by mail or posting                       | \$2.00  |

9. **DISPOSITION OF UNCLAIMED ANIMALS:** The animal shelter shall keep all impounded animals for six (6) days, or twenty-four (24) hours for cats. If the owner or keeper has not reclaimed the animal within that time or if the owner or keeper is unknown and the Animal Control Officer is not able to place the animal, the Coastal Humane Society shall dispose of the animal as appropriate. The owner, if known, will be responsible for reimbursing the Town for the costs associated with the impoundment and disposal of the animal.

10. **BITCH IN HEAT:** The owner of any bitch in heat shall keep the dog confined or on a leash at all times and shall not permit the dog to be at large within the Town or on the premises other than those of the owner. Every bitch found running at large in violation of this ordinance, is declared to be a public nuisance and shall be impounded and the owner or keeper shall be deemed guilty of a misdemeanor.

11. **NUMBER OF DOGS LIMITED:** It shall be unlawful for any person or persons to keep or harbor within the Town more than four (4) dogs over six (6) months old on April 1st unless a kennel license is issued. This limitation shall not apply to any persons or

corporation engaged in the commercial business of breeding, buying, selling or boarding of dogs, or operating a veterinary hospital.

12. **DISPOSITION OF DOMESTICATED ANIMALS WHICH HAVE BITTEN PEOPLE:** All apparently healthy domesticated animals, regardless of vaccination status which bite humans, must be quarantined for ten (10) days, thereby separating the animal from humans and other animals, for the purpose of observing for signs of rabies and preventing the animal from spreading the disease. During the quarantine period, the keeper shall not destroy the animal nor allow it to be destroyed.

A. Exception: If a wolf hybrid or stray domesticated animal bites a person or domesticated animal, it will be euthanized at the Owner's expense and tested at the Health and Environmental Testing Laboratory for rabies as soon as possible.

13. **WHEN ANIMALS MAY BE KILLED:** If any dangerous, fierce or vicious animal cannot be safely taken in and impounded, such animal may be slain by any Police Officer or duly authorized Animal Control Officer. In all cases where any animal which has bitten a person or caused abrasion of the skin of any person, is slain by an authorized person (whether by order of the court or otherwise) and the period of less than ten (10) days has elapsed, it shall be the duty of the authorized person to deliver the carcass and brain, intact, to the Chief of Police or the Animal Control Officer who shall forward the head to the Health and Environmental Testing Laboratory and properly dispose of the carcass.

14. **EXAMINATION OF QUARANTINED ANIMALS:** The Animal Control Officer shall make periodic observations for symptoms of rabies. Any signs of illness in the animal will be reported to the Animal Control Officer and the animal will be transported, at owner's expense, to the veterinarian of the owner's choice for examination. At the end of the ten (10) day quarantine period the animal shall be examined by a veterinarian before release from quarantine. The keeper of the animal will provide the Animal Control Officer with a copy of the Veterinarians clearance at which time the Animal Control Officer will notify the person exposed.

15. **DANGEROUS DOG:** The keeper of a dangerous dog will not allow the dog to be outside without being on a leash or some form of controlling device or off their property without a leash of no more than six (6) feet in length which shall be attached to the dogs collar or harness at all times.

16. **NUISANCE:** No animal shall be permitted by a keeper to cause a nuisance.

A. Exception: Dogs barking at trespassers or threatening trespassers on private property on which the dog is situated or properly restrained to, or any threat or provocation by a person not on the property.

17. **PENALTIES:** Any person who is found to have violated any provision of this Ordinance shall pay a civil penalty of not more than twenty five dollars (\$25.00) for the first offense; not more than two hundred dollars (\$200.00) for the second offense; and not

more than five hundred dollars (\$500.00) for the third and subsequent offenses. Each day of violation shall constitute a separate offense. All civil penalties shall be paid to the Town. In addition to the civil penalties, the person violating this ordinance shall pay the Town's attorney's fees for the prosecution of the action. Finally, the Town may seek appropriate legal and equitable relief in a court of competent jurisdiction to enforce the provisions of the Ordinance.

18. **ENFORCEMENT:** All portions of this ordinance shall be enforced by the Animal Control Officer or Chief of Police in his/her absence. The Animal Control Officer shall inform the Chief of Police concerning any case of rabies or animal bites.

19. **EFFECTIVE DATE:** This Ordinance shall become effective after it's adoption at the May 18/19 1999 Town Meeting and will stay in effect until repealed or replaced. Any other Ordinance concerning "Domestic Animal Control" or "Control of Dogs" is hereby repealed.

20. **SEPARABILITY:** If any section, subsection, sentence or part of this Ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Ordinance.

#### Amendment Summary

<u>Date</u>	<u>Section</u>	<u>Summary</u>
May 2001	8. NOTICE & REC.....	Replaced section
May 2002	3. DEFINITIONS	Redefined "Nuisance" for barking
May 2002	8. NOTICE & REC.....	Amended claim & rabies vac. proof
May 2002	9. DISPOSITION OF .....	Changed impoundment time frames
May 2002	16. NUISANCE	Added exception
May 2002	18. WARRANT ....	Changed procedure
May 2010	18. WARRANT .....	Deleted section as per change in State Law and renumbered subsequent paragraphs

Attest to be a true copy:      John M. Young  
   Deputy Town Clerk  
   Town of Phippsburg

**BOARD OF APPEALS ORDINANCE  
TOWN OF PHIPPSBURG  
March 19, 1994 (as amended through May 5, 2015)**

This Ordinance repeals and replaces those sections of the Land Use Ordinance of June 1993 pertaining to the Board of Appeals, namely Section 4.7, 4.8, and 4.9 and the Shoreland Zoning Ordinance of June 1993 sections 16.G.1.a to end of section.

**I. GENERAL PROVISIONS:**

- A. Business of the Board shall be conducted in accord with Maine Statutes, Town Ordinances and Roberts' Rule of Order.
- B. It shall be the responsibility of the Board to become familiar with all the duly enacted ordinances of the town which it may be expected to act upon as well as with the applicable state statutes. As of the date of enactment of this ordinance, the Board is responsible for the following town ordinances: Harbor Ordinance, Shellfish Ordinance, Land Use Ordinance and Subdivision Ordinance and the Shoreland Zoning Ordinance.
- C. It shall be the responsibility of the Board to become familiar with the community goals, desires and policies as expressed in the Comprehensive Plan, and grant the minimum relief which will insure that the goals and policies of the plan are preserved and substantial justice is done.

**II. APPOINTMENTS:**

- A. The Board shall consist of five members appointed by the Board of Selectpersons of the Town of Phippsburg for terms of three years. The Board of Selectpersons shall appoint the necessary number of members within thirty (30) days of the Annual Town Meeting each year. The initial appointments, following the 1994 Annual Town Meeting, shall be as follows: two members to serve terms to expire as of the date of the Annual Town Meeting in 1995, two members to serve terms to expire as of the date of the Annual Town Meeting in 1996, and one member to serve a term to expire as of the date of the Annual Town Meeting in 1997.
- B. Thereafter, all appointments to the Board shall be for terms of three years.
- C. The Board of Selectpersons shall appoint two (2) alternate members to the Board to act when a regular member must be absent. The chairperson of the Board shall designate which shall serve in place of the absent member.
- D. Neither a selectperson nor his or her spouse may be a regular member or an alternate member of the Board.

- E. Any member of the Board may be removed from the Board, for cause, by the Board of Selectpersons before expiration of his/her term, but only after notice and an opportunity for a hearing at which the member in question has an opportunity to refute specific charges against him/her. The term, "for cause" shall include failure to attend three consecutive Board meetings or hearings without a sufficient justification, or voting when the member has a "conflict of interest."
- F. When there is a vacancy, the Secretary shall immediately notify the Board of Selectpersons. The Board of Selectpersons shall within 60 days appoint a person to serve for the unexpired term.

### III. CONFLICT OF INTEREST:

Any question of whether a particular issue involves a "conflict of interest" sufficient to disqualify a member from voting thereon, shall be decided by a majority vote of the members, except the member whose potential conflict is under consideration.

The term "conflict of interest" shall be constructed to mean direct or indirect monetary interest, which shall include monetary benefit to any member of the person's immediate family (grandparents, parents, spouse, children, grandchildren, etc.) or to the person's employer or the employer of any member of the person's immediate family.

### IV. POWERS AND LIMITATIONS:

- A. The Board shall have the following powers to be exercised only upon receipt of written appeal by an aggrieved party:
  - 1. The Board may interpret the provisions of any applicable town ordinance which are called into question unless an appeal procedure is already provided for in the specific ordinance or by state statute.
  - 2. The Board may grant a variance only where strict application of any applicable town ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words "undue hardship" as used in this subsection mean:
    - a. That the land in question cannot yield a reasonable return unless a variance is granted;
    - b. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
    - c. That the granting of a variance will not alter the essential character of the locality; and

- d. The hardship is not a result of action taken by the applicant or prior owner.
3. As per 30A M.R.S.A. § 4353 Para 4-A the Board may grant a disability variance which will allow the owner of a dwelling to make physical changes for the purpose of making that dwelling unit accessible to a person with disabilities who resides in or regularly uses the dwelling. The variance will be limited solely to the installation of equipment or the construction of structures necessary for access and egress. The Board also may impose conditions on the variance, including limiting the variance to the duration of the disability or the time that the person with the disability lives in the dwelling.
4. Unless otherwise specified in a specific ordinance or by state statute, the Board shall have the power to hear and determine all appeals by any person directly or indirectly affected by any decision, action or failure to act with respect to any license, permit variance or other required approval, or any application thereof, including, the grant, conditional grant, denial, suspension, or revocation of any such license, permit, variance or other approval (hereinafter a "Decision"):
- a. rendered by the Code Enforcement Officer or the Planning Board pursuant to Shoreland Zoning Ordinance;
  - b. rendered by the Code Enforcement Officer or Building Inspector relating to building code enforcement pursuant to any statute, the Town Land Use ordinance, or Article II of the September 22, 1993 Town Meeting (Plumbing Code);
  - c. rendered by the Planning Board of the Municipal Officers pursuant to the Subdivision Regulations or the Maine subdivision statute.
  - d. When hearing an Appeal of a decision made by the Planning Board or the Code Enforcement Officer that did not require a butter notification or a public hearing, the Board shall act in a "de novo" capacity, the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of the evidence and the law, make findings of fact, and reach its own decision.

When hearing an Appeal of a decision made by the Planning Board or Code Enforcement Officer that required either a butter notification or a public hearing, the Board of Appeals shall act in an appellate capacity and shall make its decision based on the record presented to it from the Planning Board or Code Enforcement Officer.

For all matters before the Board of Appeals, the person filing the appeal or request shall have the burden of proof.



Definition of a De Novo Review: A review that looks at the factual and legal issues afresh, undertakes its own credibility determinations, evaluates the evidence presented, makes findings of fact, and draws its own factual and legal conclusions based on the evidence presented.

- B. The Powers and Limitations of the Board, as specified in Section V (A), can be changed only by an amendment to this ordinance as approved by the voters.

V. VOTING:

- A. A quorum shall consist of three members of the Board.
- B. No hearing or meeting of the Board shall be held, nor any action taken, in the absence of a quorum; however those members present shall be entitled to request the chairperson to call a special meeting for a subsequent date.
- C. All matters shall be decided by a roll call vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of the entire regular membership of the Board unless otherwise specified herein.
- D. A tie vote or favorable vote by a lesser number than the required majority of three (3) members shall be considered a rejection of the application under consideration.
- E. If a member has a conflict of interest, said member shall not be counted by the Board in establishing the quorum for such matter.
- F. The chairperson shall appoint an alternate member to act for each regular member who is: disqualified from voting, unable to attend the hearing, or absent from a substantial portion of the hearing due to late arrival. The alternate member will act for the regular member from the initiation of a case until the case is decided.

VI. APPEAL PROCEDURE:

- A. Any person aggrieved by an action which comes under the jurisdiction of the Board pursuant to Section V must file such application for appeal, in writing on forms provided with all supporting documentation, within thirty (30) days of the granting or denial of a permit. The applicant shall file this appeal with the Chairperson of the Board, setting forth the ground for his/her appeal. The person filing the appeal shall have the burden of proof. The original plus Seven (7) copies of the application and all supporting documentation shall be provided.
- B. The fee to accompany applications for appeal shall be fifty (\$50.00) dollars. Checks are to be made payable to the Board of Appeals of the Town of Phippsburg.

- C. As per 38 MRSA §438-A, sub-§6-A - If a request is made for a variance from the requirements of the Shoreland Zoning Ordinance a copy of the request must be forwarded to the Commissioner of the Department of Environmental Protection 20 days prior to action by the municipality. The material submitted must include the application and all supporting information provided by the applicant. The Commissioner may comment when the Commissioner determines that the municipal issuance of the variance would not be in compliance with the requirements of state law for zoning variance or that the variance would undermine the purposes stated in section 435. These comments, if submitted, must be made part of the record and must be considered by the Board of Appeals prior to taking action on the variance request.

## VII. HEARINGS:

- A. The Board shall schedule a public hearing on all appeals applications within sixty (60) days of the filing of a completed appeal application with all supporting documentation. The original plus Seven (7) copies of the application and all supporting documentation shall be provided.
- B. The Board shall cause a notice of the public hearings to be given to the Board of Selectmen, Planning Board, and the Appellant at least 10 (ten) days prior to the hearings. The Appellant shall notify abutters of the requested variance at least 10 (ten) days prior to the hearing. Proof of such notice shall be presented with the application at the public hearing. Acceptable proof shall consist of an abutter's signature on the application form, an abutter's statement and signature on a separate document, or a certified mail return receipt showing either a signature or post office failure to deliver to the abutter's last known address.

## VIII. DECISIONS:

- A. Decisions by the Board shall be made not later than thirty (30) days from the date of the final hearing.
- B. The final decision on any matter before the Board shall be made by written order signed by the chairperson. The transcript of testimony, if any, and exhibits, together with all papers and requests filed in the proceedings, shall constitute the record. All decisions shall become a part of the record and shall include a statement of findings and conclusions, as well as the reasons or basis thereof, upon all the material issues of fact, law or discretion presented and the appropriate order, relief or denial thereof.
- C. The Board, in reaching said decision, shall be guided by standards specified in the applicable state laws, local ordinances, policies specified in the Comprehensive Plan and by Findings of Fact by the Board in each case.

- D. In reviewing an application on any matter, the standards in any applicable local ordinance or statute shall take precedence over the standards of this ordinance whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.
- E. The board may reverse the decision, or failure to act, of a town officer, board or commission only upon a finding that the decision, or failure to act, was clearly contrary to specific provisions of this ordinance or unsupported by substantial evidence in the record.
- F. Notice of any decision shall be sent by certified or registered mail or hand delivered to the applicant, his representative or agent, the concerned town officers, boards, commissions, Board of Selectpersons within seven (7) days of the decision.
- G. Decisions of the Board shall be immediately filed in the town office and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.
- H. Unless otherwise specified, any order or decision of the Board for a permitted use shall expire if a building permit for the use is not obtained by the applicant within ninety (90) days from the date of the decision, however, the Board may extend this time an additional ninety (90) days.
- I. If the board grants a variance under sections IV. A. 2. or IV. A.3., a certificate indicating the name of the current property owner, identifying the property by reference to the last recorded deed in its chain of title and indicating the fact that a variance, including any conditions on the variance, has been granted and the date of the granting, shall be prepared in recordable form by the Chairman of the Board of Appeals and delivered to the property owner for recording. The property owner must record this certificate in the local registry of deeds within 90 days of the date of the final written approval of the variance or the variance is void. The variance is not valid until recorded as provided in this subsection. For the purpose of this subsection, the date of the final written approval shall be the date stated on the written approval.

IX. RECONSIDERATION:

- A. The Board may reconsider any decision within 45 days of its prior decision. A request to the Board to reconsider a decision must be filed within 10 days of the decision that is to be reconsidered. A vote to reconsider and the action taken on that reconsideration must occur and be completed within 45 days of the date of the vote on the original decision. The Board may conduct additional hearings and receive additional evidence and testimony. Notwithstanding section X.A., appeal of a reconsidered decision must be made within 15 days after the decision on reconsideration.

B. Reconsideration should be for one of the following reasons:

1. The record contains significant factual errors due to fraud or mistake, regarding facts upon which the decision was based; or
2. The Board misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction.

X. APPEAL TO SUPERIOR COURT:

- A. The decisions of the Board of Appeals may be taken, within forty-five (45) days after the decision is rendered, by any party to Superior Court in accordance with the Maine Rules of Civil Procedure.
- B. Where the Board has jurisdiction under Article IV of this ordinance an appeal to Superior Court, in general, is to be presented by the matter having been properly brought to the Board.

XI. SEVERABILITY:

The invalidity of any section or provision of this ordinance shall not be held to invalidate any other section or provision of this ordinance.

Amendment Summary		
Date	Section	Amendment
5/14/02	Title Paragraph	Added Shoreland Zoning references
5/14/02	Section VI.A.	Person filing appeal has burden of proof
5/14/02	Section VII.B.	Change in Notice of Public Hearing
5/14/02	Section X.A.	Time limit for appeal to Superior Court reduced
5/11/05	Section IV.	Allows "De Novo" Hearings in certain circumstances
5/10/06	Section IV.A.1.	Removes specific applicable ordinances that may be appealed
5/10/06	Section IV.A.3.	Added disability variance
5/10/06	Section IV.A.4.	Reference to ordinances and statute
5/10/06	Section VI.B.	Increase in application fee to \$50.00
5/10/06	Section VI.C.	DEP requirement to forward Shoreland Zoning variance requests
5/10/06	Section VII.A.	Increase in scheduling Public Hearings to 60 days
5/10/06	Section VIII.D.	Word change from <u>these rules</u> to <u>this ordinance</u>
5/10/06	Section IX.A.	Reconsideration time frame change (filing within 10 days, hearing within 45 days, appeal within 15 days)
5/1/12	Section VIII.I.	Requires recording of variances
5/5/15	Section VI. A. & VII. A.	Requires 7 copies of application and documents

Certified to be a true copy: Lisa M. Wallace \_\_\_\_\_

**BUDGET COMMITTEE ORDINANCE**  
**TOWN OF PHIPPSBURG, February 16, 1994**  
**Amended through May 7, 2013**

1. Purpose: To establish a standing Budget Committee of seven persons, consisting of two members appointed annually by the Board of Select persons and five members elected by town voters at the annual meeting. The Budget Committee will operate according to the following procedures:

A. The seven members shall serve staggered terms and shall elect among themselves a chair, vice-chair, and secretary.

B. Everyone shall inform the Budget Committee of all proposed major expenditures for the town. It shall be requested that the Directors of Regional School Unit #1 advise the Budget Committee of all proposed major expenditures that would affect the Town's share of payment to the RSU.

C. In a public meeting prior to any town meeting at which money is proposed to be appropriated, the Budget Committee shall independently assess and make recommendations to voters on all spending requests to be acted on at that town meeting.

D. The Budget Committee recommendations shall be included, together with those of the Board of Selectpersons, in all budgetary items on the town meeting warrant. The Budget Committee will review the Regional School Unit #1 budget and make recommendations to Phippsburg voters prior to the Regional Town Budget Meeting.

<b>Amendment Summary</b>		
<b>Date</b>	<b>Section</b>	<b>Amendment</b>
5/18/96	Section 1.B.	Added requirement for "everyone" to notify.
5/18/96	Section 1.C.	Changed the hearing requirement to "all" Town Meetings.
5/13/02	Section 1.A	Removed 2 term limit.
5/6/08	Section 1	Changed School Board appointed position to Selectmen appointed.
5/6/08	Section 1.B	Requests RSU#1 to advise the Budget Committee of proposed major expenditures.
5/6/08	Section 1.D	Requires Budget Committee to review and make recommendations on the RSU#1 budget.
5/6/08	Section 2	Deleted implementation schedule
5/7/13	Section 1.C.	Changed "hearing" to "meeting"

Attest to be a true copy:      John M. Young  
Deputy Town Clerk  
Town of Phippsburg

**TOWN OF PHIPPSBURG  
DISBURSEMENT ORDINANCE  
MAY 7, 2013**

Section 1. Authority.

This ordinance is enacted pursuant to 30-A M.R.S.A. §§ 3001 (municipal home rule) and 5603 (2) (A).

Section 2. Purpose

The purpose of this ordinance is to provide an alternative to the statutory procedure for approval of warrants authorizing the Treasurer to disburse money.

Section 3. Procedure for approval of Warrants.

The Treasurer may disburse money only on the authority of a warrant drawn for the purpose which is:

- affirmatively voted and signed by a majority of the municipal officers at a duly called public meeting; or
- seen and signed by a majority of them acting individually and separately; or signed as otherwise provided by law for the disbursement of employees' wages and benefits and payment of municipal education costs; or
- for the release of State of Maine funds collected by the Town on behalf of the State of Maine (i.e. Department of Motor Vehicle, Inland Fisheries and Wildlife, Maine Department of Agriculture), any one of the municipal officers, acting alone, may review, approve, and sign such warrant.

**FLOODPLAIN MANAGEMENT ORDINANCE**  
**FOR THE**  
**TOWN OF PHIPPSBURG, MAINE**

---

ENACTED: MAY 5, 2015  
Date

EFFECTIVE: MAY 5, 2015  
Date

CERTIFIED BY: Lisa M. Wallace  
Signature

CERTIFIED BY: Lisa M. Wallace  
Print Name

Town Clerk  
Title

Affix Seal

# **FLOODPLAIN MANAGEMENT ORDINANCE**

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## **ARTICLE I-PURPOSE AND ESTABLISHMENT**

Certain areas of the Town of Phippsburg, Maine are subject to periodic flooding, causing serious damages to properties within these areas. Relief is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

Therefore, the Town of Phippsburg, Maine has chosen to become a participating community in the National Flood Insurance Program, and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (P.L. 90-488, as amended) as delineated in this Floodplain Management Ordinance.

It is the intent of the Town of Phippsburg, Maine to require the recognition and evaluation of flood hazards in all official actions relating to land use in the floodplain areas having special flood hazards.

The Town of Phippsburg has the legal authority to adopt land use and control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407, and Title 38 MRSA, Section 440.

The National Flood Insurance Program, established in the aforesaid Act, provides that areas of the Town of Phippsburg having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This Ordinance establishes a Flood Hazard Development Permit system and review procedure for development activities in the designated flood hazard areas of the Town of Phippsburg, Maine.

The areas of special flood hazard, Zones A, AE, AO and VE for the Town of Phippsburg, Sagadahoc County, Maine, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study – Sagadahoc County" dated July 16, 2015 with accompanying "Flood Insurance Rate Map" dated July 16, 2015 with panels: 214F, 218F, 267F, 269F, 277F, 278F, 279F, 281F, 283F, 286F, 287F, 288F, 289F, 291F, 293F, 294F, 351F, 352F, 353F, 354F, 356F, 357F, 359F derived from the county wide digital Flood Insurance Rate Map entitled "Digital Flood Insurance Rate Map, Sagadahoc County," are hereby adopted by reference and declared to be a part of this Ordinance.

## **ARTICLE II - PERMIT REQUIRED**

Before any construction or other development (as defined in Article XIV), including the placement of manufactured homes, begins within any areas of special flood hazard established in Article I, a Flood Hazard Development Permit shall be obtained from the Code Enforcement Officer except as provided in Article VII. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the Town of Phippsburg, Maine.

## **ARTICLE III - APPLICATION FOR PERMIT**

The application for a Flood Hazard Development Permit shall be submitted to the Code Enforcement Officer and shall include:

A. The name, address and phone number of the applicant, owner, and contractor;

- B. An address and a map indicating the location of the construction site;
- C. A site plan showing location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions;
- D. A statement of the intended use of the structure and/or development;
- E. A statement of the cost of the development including all materials and labor;
- F. A statement as to the type of sewage system proposed;
- G. Specification of dimensions of the proposed structure and/or development;

[Items H-K.3. apply only to new construction and substantial improvements.]

- H. The elevation in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of the:
  - 1. base flood at the proposed site of all new or substantially improved structures, which is determined:
    - a. in Zones AE, AO, and VE from data contained in the "Flood Insurance Study - Sagadahoc County, Maine," as described in Article I; or,
    - b. in Zone A:
      - (1) from any base flood elevation data from federal, state, or other technical sources (such as FEMA's Quick-2 model, FEMA 265), including information obtained pursuant to Article VI.K. and IX.D.;
      - (2) from the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a Professional Land Surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or, in the absence of all other data,
      - (3) to be the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed building.
  - 2. highest and lowest grades at the site adjacent to the walls of the proposed building;
  - 3. lowest floor, including basement; and whether or not such structures contain a basement; and,
  - 4. level, in the case of non-residential structures only, to which the structure will be floodproofed;

- I. A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Article VI;
- J. A written certification by a Professional Land Surveyor, registered professional engineer or architect, that the base flood elevation and grade elevations shown on the application are accurate
- K. The following certifications as required in Article VI by a registered professional engineer or architect:
  - 1. a Floodproofing Certificate (FEMA Form 81-65, as amended), to verify that the floodproofing methods for any non-residential structures will meet the floodproofing criteria of Article III.H.4.; Article VI.G.; and other applicable standards in Article VI;
  - 2. a V-Zone Certificate to verify that the construction in coastal high hazard areas, Zone VE, will meet the criteria of Article VI.P.; and other applicable standards in Article VI;
  - 3. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of Article VI.L.2.a.;
  - 4. a certified statement that bridges will meet the standards of Article VI.M.;
  - 5. a certified statement that containment walls will meet the standards of Article VI.N.;
- L. A description of the extent to which any water course will be altered or relocated as a result of the proposed development; and,
- M. A statement of construction plans describing in detail how each applicable development standard in Article VI will be met.

#### **ARTICLE IV - APPLICATION FEE AND EXPERT'S FEE**

A non-refundable application fee of \$20.00 shall be paid to the Phippsburg Tax Collector and a copy of a receipt for the same shall accompany the application.

An additional fee may be charged if the Code Enforcement Officer and/or Board of Appeals needs the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within 10 days after the town submits a bill to the applicant. Failure to pay the bill shall constitute a violation of the ordinance and be grounds for the issuance of a stop work order. An expert shall not be hired by the municipality at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision to hire expert assistance may appeal that decision to the Board of Appeals.

## **ARTICLE V - REVIEW STANDARDS FOR FLOOD HAZARD DEVELOPMENT PERMIT APPLICATIONS**

The Code Enforcement Officer shall:

- A. Review all applications for the Flood Hazard Development Permit to assure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of Article VI (Development Standards) have been, or will be met;
- B. Utilize, in the review of all Flood Hazard Development Permit applications:
  - 1. the base flood and floodway data contained in the "Flood Insurance Study - Sagadahoc County, Maine," as described in Article I.;
  - 2. in special flood hazard areas where base flood elevation and floodway data are not provided, the Code Enforcement Officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other technical sources, including information obtained pursuant to Article III.H.1.b.; Article VI.K.; and Article IX.D., in order to administer Article VI of this Ordinance; and,
  - 3. when the community establishes a base flood elevation in a Zone A by methods outlined in Article III.H.1.b., the community shall submit that data to the Maine Floodplain Management Program.
- C. Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in Article I of this Ordinance;
- D. In the review of Flood Hazard Development Permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1344;
- E. Notify adjacent municipalities, the Department of Environmental Protection, and the Maine Floodplain Management Program prior to any alteration or relocation of a water course and submit copies of such notifications to the Federal Emergency Management Agency;
- F. If the application satisfies the requirements of this Ordinance, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:
  - 1. A two-part Flood Hazard Development Permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time the applicant shall provide the Code Enforcement Officer with a Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer or architect based on the Part I permit construction, "as built", for verifying compliance with the elevation requirements of Article VI, paragraphs F, G, H, or P. Following review of the Elevation Certificate data, which shall take place within 72 hours of receipt of the application,

the Code Enforcement Officer shall issue Part II of the Flood Hazard Development Permit. Part II shall authorize the applicant to complete the construction project; or,

2. A Flood Hazard Development Permit for Floodproofing of Non-Residential Structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of Article VI.G.1.a., b., and c. The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
3. A Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

For development that requires review and approval as a Conditional Use, as provided for in this Ordinance, the Flood Hazard Development Permit Application shall be acted upon by the Planning Board as required in Article VII.

- G. Maintain, as a permanent record, copies of all Flood Hazard Development Permit Applications, corresponding Permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of Article X of this Ordinance, and copies of Elevation Certificates, Floodproofing Certificates, Certificates of Compliance and certifications of design standards required under the provisions of Articles III, VI, and VIII of this Ordinance.

## **ARTICLE VI - DEVELOPMENT STANDARDS**

All developments in areas of special flood hazard shall meet the following applicable standards:

**A. All Development** - All development shall:

1. be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
2. use construction materials that are resistant to flood damage;
3. use construction methods and practices that will minimize flood damage; and
4. use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located to prevent water from entering or accumulating within the components during flooding conditions.

- B. **Water Supply** - All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- C. **Sanitary Sewage Systems** - All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood waters.
- D. **On Site Waste Disposal Systems** – On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during floods.
- E. **Watercourse Carrying Capacity** - All development associated with altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood carrying capacity of the watercourse.
- F. **Residential** - New construction or substantial improvement of any residential structure located within:
  - 1. Zones AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
  - 2. Zones AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
  - 3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
    - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
    - b. at least three feet if no depth number is specified.
  - 4. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D.
  - 5. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.P.
- G. **Non Residential** - New construction or substantial improvement of any non-residential structure located within:
  - 1. Zones AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
    - a. be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to the passage of water;

- b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
    - c. be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K. and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
  - 2. Zones AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
  - 3. Zone AO shall have the lowest floor (including basement) elevated above the highest adjacent grade:
    - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
    - b. at least three feet if no depth number is specified; or,
    - c. together with attendant utility and sanitary facilities be floodproofed to meet the elevation requirements of this section and floodproofing standards of Article VI.G.1.
  - 4. Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B.; or Article IX.D., or
    - a. together with attendant utility and sanitary facilities meet the floodproofing standards of Article VI.G.1.
  - 5. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.P.
- H. **Manufactured Homes** - New or substantially improved manufactured homes located within:
- 1. Zones AE shall:
    - a. be elevated such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation;
    - b. be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and,
    - c. be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:

- (1) over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by,
  - (2) frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
  - (3) all components of the anchoring system described in Article VI.II.1.c.(1) & (2) shall be capable of carrying a force of 4800 pounds.
2. Zones AO shall have adequate drainage paths around structures on slopes, to guide floodwater away from the proposed structures.
3. Zone AO shall have the lowest floor (including basement) of the manufactured home elevated above the highest adjacent grade:
  - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
  - b. at least three feet if no depth number is specified; and,
  - c. meet the anchoring requirements of Article VI.II.1.c.
4. Zone A shall:
  - a. be elevated on a permanent foundation, as described in Article VI.H.1.b., such that the lowest floor (including basement) of the manufactured home is at least one foot above the base flood elevation utilizing information obtained pursuant to Article III.H.1.b.; Article V.B; or Article IX.D.; and
  - b. meet the anchoring requirements of Article VI.H.1.c.
5. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of Article VI.P.
- I. **Recreational Vehicles** - Recreational Vehicles located within:
  1. Zones A and AE, shall either:
    - a. be on the site for fewer than 180 consecutive days,
    - b. be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or,



- c. be permitted in accordance with the elevation and anchoring requirements for "manufactured homes" in Article VI.H.1.
  2. Zone VE and Coastal AE Zone (as defined) shall meet the requirements of either Article VI.I.1.a. and b., or Article VI.P.
- J. **Accessory Structures** - Accessory Structures, as defined in Article XIV, located within Zones A, AE, and AO, shall be exempt from the elevation criteria required in Article VI.F. & G. above, if all other requirements of Article VI and all the following requirements are met. Accessory Structures shall:
1. be 500 square feet or less and have a value less than \$3000;
  2. have unfinished interiors and not be used for human habitation;
  3. have hydraulic openings, as specified in Article VI.L.2., in at least two different walls of the accessory structure;
  4. be located outside the floodway;
  5. when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure;
  6. have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area; and
  7. be located outside the Coastal AE Zone.
- K. **Floodways** -
1. In Zone AE riverine areas, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted within a regulatory floodway which is designated on the community's Flood Insurance Rate Map unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
  2. In Zones AE and A riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in the floodway as determined in Article VI.K.3. unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development:

- a. will not increase the water surface elevation of the base flood more than one foot at any point within the community; and,
  - b. is consistent with the technical criteria contained in FEMA's guidelines and standards for flood risk analysis and mapping.
- 3. In Zones AE and A riverine areas, for which no regulatory floodway is designated, the regulatory floodway is determined to be the channel of the river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high water mark to the upland limit of the floodplain.
- L. **Enclosed Areas Below the Lowest Floor** - New construction or substantial improvement of any structure in Zones A, AE, and AO, that meets the development standards of Article VI, including the elevation requirements of Article VI, paragraphs F, G, or H and is elevated on posts, columns, piers, piles, "stilts," or crawl spaces may be enclosed below the base flood elevation requirements provided all the following criteria are met or exceeded:
  - 1. Enclosed areas are not "basements" as defined in Article XIV;
  - 2. Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood water. Designs for meeting this requirement must either:
    - a. be engineered and certified by a registered professional engineer or architect; or,
    - b. meet or exceed the following minimum criteria:
      - (1) a minimum of two openings having a total net area of not less than one square inch for every square foot of the enclosed area;
      - (2) the bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and,
      - (3) openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means;
  - 3. The enclosed area shall not be used for human habitation; and,
  - 4. The enclosed areas are usable solely for building access, parking of vehicles, or storage.
- M. **Bridges** - New construction or substantial improvement of any bridge in Zones A, AE, AO and VE shall be designed such that:

1. when possible, the lowest horizontal member (excluding the pilings, or columns) is elevated to at least one foot above the base flood elevation; and
2. a registered professional engineer shall certify that:
  - a. the structural design and methods of construction shall meet the elevation requirements of this section and the floodway standards of Article VI.K.; and
  - b. the foundation and superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

**N. Containment Walls** - New construction or substantial improvement of any containment wall located within:

1. Zones A, AE and VE shall:
  - a. have the containment wall elevated to at least one foot above the base flood elevation;
  - b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and,
  - c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a Flood Hazard Development Permit, as required by Article III.K.
2. Zones AO shall have adequate drainage paths around containment walls on slopes, to guide floodwater away from the proposed walls.
3. Zone AO shall have the top of the containment wall elevated above the highest adjacent grade:
  - a. at least one foot higher than the depth specified in feet on the community's Flood Insurance Rate Map; or,
  - b. at least three feet if no depth number is specified; and,
  - c. shall meet the requirements of Article VI.N.1.b. & c.

**O. Wharves, Piers and Docks** - New construction or substantial improvement of wharves, piers, and docks are permitted in Zones A, AE, AO and VE, in and over water and seaward of the mean high tide if the following requirements are met:

1. wharves, piers, and docks shall comply with all applicable local, state, and federal regulations; and

2. for commercial wharves, piers, and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for the construction.

**P. Coastal Floodplains -**

1. All new construction located within Zones AE and VE shall be located landward of the reach of mean high tide except as provided in Article VI.P.6.
2. New construction or substantial improvement of any structure located within Zone VE and Coastal AE Zone (as defined) shall:
  - a. be elevated on posts or columns such that:
    - (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to one foot above the base flood elevation;
    - (2) the pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and,
    - (3) water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
  - b. have the space below the lowest floor:
    - (1) free of obstructions; or,
    - (2) constructed with open wood lattice-work, or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or,
    - (3) constructed to enclose less than 300 square feet of area with non-supporting breakaway walls that have a design safe loading resistance of not less than 10 or more than 20 pounds per square foot.
  - c. require a registered professional engineer or architect to:
    - (1) develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the *Coastal Construction Manual*, (FEMA-55); and,
    - (2) certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of Article VI.P.2.
3. The use of fill for structural support in Zone VE is prohibited.

4. Human alteration of sand dunes within Zone VE is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
5. The area below the lowest floor shall be used solely for parking vehicles, building access, and storage.
6. Conditional Use - Lobster sheds and fishing sheds may be located seaward of mean high tide and shall be exempt from the elevation requirement in Article VI.G. only if permitted as a Conditional Use following review and approval by the Planning Board, as provided in Article VII, and if all the following requirements and those of Article VI.A., VI.K., and VI.L. are met:
  - a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less and shall not exceed more than one story.
  - b. The structure shall be securely anchored to the wharf or pier to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.
  - c. The structure will not adversely increase wave or debris impact forces affecting nearby buildings.
  - d. The structure shall have unfinished interiors and shall not be used for human habitation.
  - e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either elevated or floodproofed to one foot above the base flood elevation.
  - f. All electrical outlets shall be ground fault interrupt type. The electrical service disconnect shall be located on shore above the base flood elevation and when possible outside the Special Flood Hazard Area.

#### **ARTICLE VII - CONDITIONAL USE REVIEW**

The Planning Board shall hear and decide upon applications for conditional uses provided for in this Ordinance. The Planning Board shall hear and approve, approve with conditions, or disapprove all applications for conditional uses. An applicant informed by the Code Enforcement Officer that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

##### **A. Review Procedure for a Conditional Use Flood Hazard Development Permit**

1. The Flood Hazard Development Permit Application with additional information attached addressing how each of the conditional use criteria specified in the Ordinance will be satisfied, may serve as the permit application for the Conditional Use Permit.
2. Before deciding any application, the Planning Board shall hold a public hearing on the application within thirty days of their receipt of the application.

3. If the Planning Board finds that the application satisfies all relevant requirements of the ordinance, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
4. A Conditional Use Permit issued under the provisions of this Ordinance shall expire if the work or change involved is not commenced within 180 days of the issuance of the permit by the Planning Board.
5. The applicant shall be notified by the Planning Board in writing over the signature of the Chairman of the Planning Board that flood insurance is not available for structures located entirely over water or seaward of mean high tide.

**B. Expansion of Conditional Uses**

1. No existing building or use of premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under this Ordinance.

**ARTICLE VIII - CERTIFICATE OF COMPLIANCE**

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a Certificate of Compliance is issued by the Code Enforcement Officer subject to the following provisions:

- A. For New Construction or Substantial Improvement of any elevated structure the applicant shall submit to the Code Enforcement Officer:
  1. an Elevation Certificate completed by a Professional Land Surveyor, registered professional engineer, or architect, for compliance with Article VI, paragraphs F, G, H, or P and,
  2. for structures in Zone VE and Coastal AE Zone (as defined) , certification by a registered professional engineer or architect that the design and methods of construction used are in compliance with Article VI.P.2.
- B. The applicant shall submit written notification to the Code Enforcement Officer that the development is complete and complies with the provisions of this ordinance.
- C. Within 10 working days, the Code Enforcement Officer shall:
  1. review the required certificate(s) and the applicant's written notification; and,
  3. upon determination that the development conforms to the provisions of this ordinance, shall issue a Certificate of Compliance.

## **ARTICLE IX - REVIEW OF SUBDIVISION AND DEVELOPMENT PROPOSALS**

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under other federal law, state law, local ordinances or regulations, and all projects on 5 or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, assure that:

- A. All such proposals are consistent with the need to minimize flood damage.
- B. All public utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damages.
- C. Adequate drainage is provided in order to reduce exposure to flood hazards.
- D. All proposals include base flood elevations, flood boundaries, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.
- E. Any proposed development plan must include a condition of plan approval requiring that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area, are to be constructed in accordance with Article VI of this ordinance. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structure, including but not limited to a time-share interest. The condition shall clearly articulate that the municipality may enforce any violation of the construction requirement and that fact shall also be included in the deed or any other document previously described. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

## **ARTICLE X - APPEALS AND VARIANCES**

The Board of Appeals of the Town of Phippsburg may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in any order, requirement, decision, or determination made by, or failure to act by, the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this Ordinance.

The Board of Appeals may grant a variance from the requirements of this Ordinance consistent with state law and the following criteria:

- A. Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
- B. Variances shall be granted only upon:
  - 1. a showing of good and sufficient cause; and,
  - 2. a determination that should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, public expense, or

create nuisances, cause fraud or victimization of the public or conflict with existing local laws or ordinances; and,

3. a showing that the issuance of the variance will not conflict with other state, federal or local laws or ordinances; and,
  4. a determination that failure to grant the variance would result in "undue hardship," which in this sub-section means:
    - a. that the land in question cannot yield a reasonable return unless a variance is granted; and,
    - b. that the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood; and,
    - c. that the granting of a variance will not alter the essential character of the locality; and,
    - d. that the hardship is not the result of action taken by the applicant or a prior owner.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as is deemed necessary.
- D. Variances may be issued for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
1. other criteria of Article X and Article VI.K. are met; and,
  2. the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- E. Variances may be issued for the repair, reconstruction, rehabilitation, or restoration of Historic Structures upon the determination that:
1. the development meets the criteria of Article X, paragraphs A. through D. above; and,
  2. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- F. Any applicant who meets the criteria of Article X, paragraphs A. through E. shall be notified by the Board of Appeals in writing over the signature of the Chairman of the Board of Appeals that:
1. the issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance up to amounts as high as \$25 per \$100 of insurance coverage;



2. such construction below the base flood level increases risks to life and property; and,
3. the applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the municipality against any claims filed against it that are related to the applicant's decision to use land located in a floodplain and that the applicant individually releases the municipality from any claims the applicant may have against the municipality that are related to the use of land located in a floodplain.

G. Appeal Procedure for Administrative and Variance Appeals

1. An administrative or variance appeal may be taken to the Board of Appeals by an aggrieved party within thirty days after receipt of a written decision of the Code Enforcement Officer or Planning Board.
2. Upon being notified of an appeal, the Code Enforcement Officer or Planning Board, as appropriate, shall transmit to the Board of Appeals all of the papers constituting the record of the decision appealed from.
3. The Board of Appeals shall hold a public hearing on the appeal within thirty-five days of its receipt of an appeal request.
4. The person filing the appeal shall have the burden of proof.
5. The Board of Appeals shall decide all appeals within thirty-five days after the close of the hearing, and shall issue a written decision on all appeals.
6. The Board of Appeals shall submit to the Code Enforcement Officer a report of all variance actions, including justification for the granting of the variance and an authorization for the Code Enforcement Officer to issue a Flood Hazard Development Permit, which includes any conditions to be attached to said permit.
7. Any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five days from the date of any decision of the Board of Appeals.

**ARTICLE XI - ENFORCEMENT AND PENALTIES**

- A. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance pursuant to Title 30-A MRSA § 4452.
- B. The penalties contained in Title 30-A MRSA § 4452 shall apply to any violation of this Ordinance.
- C. In addition to other actions, the Code Enforcement Officer (CEO may, upon identifying a violation, submit a declaration to the Administrator of the Federal Insurance Administration requesting a flood insurance denial. The valid declaration shall consist of;

1. the name of the property owner and address or legal description of the property sufficient to confirm its identity or location;
2. a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance;
3. a clear statement that the public body making the declaration has authority to do so and a citation to that authority;
4. evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and,
5. a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

## **ARTICLE XII - VALIDITY AND SEVERABILITY**

If any section or provision of this Ordinance is declared by the courts to be invalid, such decision shall not invalidate any other section or provision of this Ordinance.

## **ARTICLE XIII - CONFLICT WITH OTHER ORDINANCES**

This Ordinance shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall control.

## **ARTICLE XIV - DEFINITIONS**

Unless specifically defined below, words and phrases used in this Ordinance shall have the same meaning as they have at common law, and to give this Ordinance its most reasonable application. Words used in the present tense include the future, the singular number includes the plural, and the plural number includes the singular. The word "may" is permissive; "shall" is mandatory and not discretionary.

**Accessory Structure** - a small detached structure that is incidental and subordinate to the principal structure.

**Adjacent Grade** - the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

**Area of Shallow Flooding** - a designated AO zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Area of Special Flood Hazard** - land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the Flood Insurance Study cited in Article I of this Ordinance.

**Base Flood** – a flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

**Basement** - area of a building that includes a floor that is subgrade (below ground level) on all sides.

**Breakaway Wall** - a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

**Building** - see **Structure**.

**Certificate of Compliance** - a document signed by the Code Enforcement Officer stating that a structure is in compliance with all of the provisions of this Ordinance.

**Coastal AE Zone** – The portion of the Coastal High Hazard Area with wave heights between 1.5 feet and 3.0 feet and bounded by a line labeled the “Limit of Moderate Wave Action (LiMWA) on a Flood Insurance Rate Map (FIRM). VE Zone floodplain construction standards are applied to development, new construction and substantial improvements in the Coastal AE Zone.

**Coastal High Hazard Area** - An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal High Hazard Areas are designated as Zone VE and Zone AE bounded by a line labeled “Limit of Moderate Wave Action (LiMWA)” on a Flood Insurance Rate Map (FIRM).

**Code Enforcement Officer** – a person certified under Title 30-A MRSA, Section 4451 (including exceptions in Section 4451, paragraph 1) and employed by a municipality to enforce all applicable comprehensive planning and land use laws.

**Conditional Use** - a use that, because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Article VII.

**Containment Wall** – wall used to convey or direct storm water or sanitary water from the initial source to the final destination.

**Development** – a manmade change to improved or unimproved real estate. This includes, but is not limited to, buildings or other structures; mining, dredging, filling, grading, paving, excavation, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials.

**Digital Flood Insurance Rate Map (FIRM)** – see **Flood Insurance Rate Map**

**Elevated Building** - a non-basement building that is:

- a. built, in the case of a building in Zones A, AE or AO, so that the top of the elevated floor, or in the case of a building in Zone VE or Coastal AE Zone , to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers, or "stilts;" and
- b. adequately anchored to not impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zones A, AE or AO, **Elevated Building** also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of flood waters, as required in Article VI.L. In the case of Zone VE and Coastal AE Zone, **Elevated Building** also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of Article VI.P.2.b.(3).

**Elevation Certificate** - an official form (FEMA Form 81-31, as amended) that:

- a. is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program; and,
- b. is required for purchasing flood insurance.

### **Flood or Flooding**

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  1. The overflow of inland or tidal waters.
  2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph a.1. of this definition.

**Flood Elevation Study** - an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

**Flood Insurance Rate Map (FIRM)** - an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

**Flood Insurance Study** - see **Flood Elevation Study**.

**Floodplain or Floodprone Area** - land area susceptible to being inundated by water from any source (see flooding).

**Floodplain Management** - means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

**Floodplain Management Regulations** - zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, and erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

**Floodproofing** - any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and contents.

**Floodway** - see **Regulatory Floodway**.

**Floodway Encroachment Lines** - the lines marking the limits of floodways on federal, state, and local floodplain maps.

**Freeboard** - a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. Freeboard tends to compensate for the many unknown factors, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed, which could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions.

**Functionally Dependent Use** - a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Historic Structure** - means any structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

- d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  1. By an approved state program as determined by the Secretary of the Interior, or
  2. Directly by the Secretary of the Interior in states without approved programs.

**Limit of Moderate Wave Action (LiMWA)** – The landward limit of the 1.5 foot breaking wave within a Coastal AE Zone. These areas are bounded by a line labeled “Limit of Moderate Wave Action” (LiMWA) on a Flood Insurance Rate Map (FIRM). The LiMWA line delineates that portion of the Special Flood Hazard Area (SFHA) landward of a VE zone in which the principal sources of flooding are astronomical high tides, storm surges, or tsunamis, not riverine sources. These areas may be subject to wave effects, velocity flows, erosion, scour, or combinations of these forces. The floodplain development and construction standards for VE Zones will be applied in the Coastal AE Zone.

**Locally Established Datum** - for purposes of this ordinance, an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or any other established datum and is used in areas where Mean Sea Level data is too far from a specific site to be practically used.

**Lowest Floor** - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements described in Article VI.L. of this Ordinance.

**Manufactured Home** - a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

**Manufactured Home Park or Subdivision** - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Mean Sea Level** – when related to the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

**Minor Development** - means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to: accessory structures as provided for in Article VI.J., mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

**National Geodetic Vertical Datum (NGVD)** - the national vertical datum, a standard established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD is based upon mean sea level in 1929 and also has been called "1929 Mean Sea Level (MSL)".

**New Construction** - structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations adopted by a community and includes any subsequent improvements to such structures.

**North American Vertical Datum (NAVD)**- means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound, and subsidence and the increasing use of satellite technology.

**100-year flood** - see **Base Flood**.

**Recreational Vehicle** - a vehicle that is:

- a. built on a single chassis;
- b. 400 square feet or less when measured at the largest horizontal projection, not including slideouts;
- c. designed to be self-propelled or permanently towable by a motor vehicle; and
- d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Regulatory Floodway** –

- a. the channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot, and
- b. when not designated on the community's Flood Insurance Rate Map, it is considered to be the channel of a river or other water course and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high water mark to the upland limit of the floodplain.

**Riverine** - relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Special Flood Hazard Area** - see **Area of Special Flood Hazard**.

**Start of Construction** - the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the

construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

**Structure** - means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

**Substantial Damage** - means, damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**Substantial Improvement** - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a historic structure, and a variance is obtained from the Board of Appeals.

**Variance** - means a grant of relief by a community from the terms of a floodplain management regulation.

**Violation** - means the failure of a structure or development to comply with a community's floodplain management regulations.

## **ARTICLE XV - ABROGATION**

This ordinance repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (P.L. 90-488, as amended).

60.3 (e) Rev. 01/15  
Prepared by DACF/JP



**HARBOR ORDINANCE  
TOWN OF PHIPPSBURG, May 15, 2018**

**The effective date of this Ordinance is May 15, 2018. This Ordinance repeals and replaces in its entirety the Ordinance entitled “Harbor Ordinance, Town of Phippsburg, March 16, 1991.”**

**1. PURPOSE:**

This ordinance is adopted in compliance with applicable state laws and the home rule powers of the Town of Phippsburg. The purpose is to avoid conflicts in the mooring of watercraft and the use of harbors in the Town’s coastal waters, to give priority for available mooring spaces to townspeople and those engaged in commercial fishing, to allot scarce mooring space equitably and within the priorities of the community and the guidelines of state law, to assure that unobstructed passage is maintained to all Town Landings and to other public or private piers and watercraft landing sites, to establish a procedure for resolving conflicts over the use of harbors and to carry out the responsibilities vested in the Town by Maine Revised Statutes Annotated (MSRA) Title 38, Chapter 1, Sections 1 through 13. This ordinance establishes regulations for marine activities within the harbors, waterways and tidal waters of the Town in order to ensure safety to persons and property, to promote the availability of use of a public resource, and to create a fair and efficient framework for the administration of that resource. Where conflicts exist between this ordinance and state and federal laws that preempt local regulations of harbors, those laws shall take precedence.

**2. HARBOR COMMISSION:**

The Board of Selectmen shall appoint a Harbor Commission, consisting of residents knowledgeable about watercraft and water access issues; said commission shall consist of not fewer than five members nor more than seven members. Harbor Commission members shall serve terms of two years, except that the first year some members shall be appointed for one year so that in future years about half of the terms shall expire annually, thus assuring continuity of membership. The Harbor Master and any Assistant Harbor Masters that may be appointed shall be ex-officio, non-voting members.

**3. HARBOR COMMISSION ORGANIZATION AND MEETINGS:**

The Harbor Commission shall annually select a chair from among its membership. The Harbor Commission shall meet in the Phippsburg Town Hall on the second Monday of January, May, and October, and with a seven day notice at such other reasonable times and places as deemed appropriate by the chair of the Harbor Commission or the Board of Selectmen, or upon petition signed by five or more watercraft owners using the coastal waters of the town. Failure of a member to attend more than two consecutive meetings of the Harbor Commission may be deemed a resignation from the Harbor Commission and the Board of Selectmen may appoint a replacement member to fill the remaining portion of the term of the person so resigning.

**4. HARBOR COMMISSION DUTIES:**

- A. The Harbor Commission or Harbor Master or Assistant Harbor Master shall review at least annually each of the harbors where three or more watercraft are moored or where private or public piers are located to determine the likelihood or existence of overcrowding or conflicts. All waters of the Town of Phippsburg are designated by the Harbor Commission for regulation, under the terms of this ordinance. In addition, if any watercraft owner who regularly uses a harbor petitions for regulation, the Harbor Commission shall control mooring spaces in accordance with this ordinance and appropriate state laws.
- B. The Harbor Commission shall determine the boundaries of each harbor subject to regulation, said boundaries to include all areas of conflict, overcrowding, or which have a potential for the same. Boundaries of regulated areas shall be based on natural features of the landscape or manmade objects such as points of land, rock outcroppings, buoys, prominent buildings, or other easily identified marks.
- C. If the Harbor Commission finds overcrowding, conflicts, or the potential for same in any harbor, the Harbor Master shall then assign mooring spaces consistent with state and federal law, the provision of this ordinance, and in accordance with the priorities mandated by this ordinance.
- D. The Harbor Commission shall sit as a Board of Appeals to hear appeals of any person aggrieved by any decision, act, or failure to act of the Harbor Master or Assistant Harbor Masters. Only those appeals shall be heard that are brought to the attention of the Harbor Commission within thirty (30) days of the incident that prompted the appeal.
- E. The Harbor Commission, Harbor Master, or Assistant Harbor Master shall forbid the placement of new moorings, and shall require the removal of existing moorings, that unreasonably interfere with the safe approach to any wharf or pier.
- F. The Harbor Commission shall study and evaluate the harbor needs of the Town of Phippsburg and make whatever recommendations it deems appropriate to the Board of Selectmen or Town Meeting.

## **5. HARBORMASTER:**

The Harbor Master shall be appointed for a two year term by the Board of Selectmen and his/her appointment shall be subject to confirmation by a majority vote of the Harbor Commission. In addition, the Board of Selectmen may appoint Assistant Harbor Masters, subject to confirmation by the Harbor Commission, for two year terms upon the recommendation of the Harbor Commission and the Harbor Master. Assistant Harbor Masters shall have the same power and authority as the Harbor Master. Persons so appointed shall perform the duties prescribed by Title 38 MRSA and enforce the provisions of this ordinance and the regulations adopted by the Harbor Commission. Unless the person or persons named as Harbor Master or Assistant Harbor Masters are also police officers or reserve law enforcement officers, they shall not carry weapons and shall not have the power of arrest. However, the Harbor Master and any Assistant Harbor Master shall notify the

Board of Selectmen of any violations of this ordinance, of violations of state laws dealing with harbor management, or violations of any regulations that may from time to time be adopted by the Harbor Commission. The Board of Selectmen shall take any and all legal steps needed to ensure compliance with and to enact penalties against violators of these provisions.

**6. GENERAL REGULATIONS:**

A. Any persons using the harbors and coastal waters of Phippsburg shall assume all risk of damage or loss to his/her property. The Town of Phippsburg assumes no risk on account of fire, theft, Act of God, or damages of any kind to watercraft.

B. No new moorings shall be installed or maintained in harbors designated for regulation by the Harbor Commission until the mooring location has been approved by the Harbor Commission, the Harbor Master, or Assistant Harbor Masters and the mooring has been duly registered (see Paragraphs C. and D. below). Moorings installed or used prior to March 1, 1990, are grandfathered and may remain, subject to other provisions of this ordinance. Moorings installed on or after March 1, 1990, shall be subject to the requirements and priorities of this ordinance.

C. All moorings must be registered annually. A mooring is registered from July 1 through June 30 of the following year.

D. Fees

1. The annual fee to register a mooring is twenty-five dollars (\$25.00) for a person who is a resident of the Town of Phippsburg on the date the mooring is registered or has paid property tax to the Town during the twelve (12) month period prior to the date on which the mooring is registered.

2. The annual fee to register a mooring is one hundred dollars (\$100.00) for a person who is neither a resident of the Town of Phippsburg on the date the mooring is registered nor has paid property tax to the Town during the twelve (12) month period prior to the date on which the mooring is registered

3. The annual fee shall be waived for one (1) mooring for one (1) commercial watercraft that is owned by a Phippsburg resident or taxpayer who demonstrates to the satisfaction of the Harbor Commission the same requirements to be considered for a Priority #2 mooring (see I. below).

4. Failure to submit a completed mooring permit application and applicable fee on or before July 31 will result in a twenty-five dollar (\$25.00) late fee. Any mooring for which payment has not been received by August 31 may be considered abandoned.

5. Fees described in this section will be assessed starting July 1, 2019.

- E. Mooring fees received by the Town shall be placed in a Harbor Commission account to be used for the expense of the Harbor Commission, the Harbor Master, and the Assistant Harbor Masters.
- F. No commercial fishing activity shall be regulated by this ordinance.
- G. Moorings or mooring locations installed or used in regulated harbors prior to March 1, 1990, shall be registered with the Harbor Commission within six months of such designation. It shall be the responsibility of the mooring owner to provide evidence of installation prior to March 1, 1990, if requested to do so by the Harbor Commission.
- H. Moorings that are registered and approved by the Harbor Commission may remain providing the owner(s) complies with this ordinance and providing the owner(s) continues to qualify under Paragraphs D. and I. of this Section.
- I. The following priorities shall govern all moorings placed on or after March 1, 1990, in each regulated harbor of Phippsburg:

Priority #1. One mooring to be assigned along the waterfront owned by a riparian owner of more than twenty five feet of shorefront, except that when shorefront has more than one owner, only one Priority #1 mooring shall be allowed for such lot of land as shown on the municipal tax maps of the Town of Phippsburg.

Priority #2. One mooring for each commercial watercraft that is owned by a Phippsburg resident or non-resident taxpayer who demonstrates to the satisfaction of the Harbor Commission, Harbor Master, or Assistant Harbor Masters that for at least one of the past three years at least a third of his/her earned income is derived from commercial fishing, the operation of a commercial fishing pier, a watercraft repair facility, the ownership of commercial fishing watercraft, or the use of a boat for a commercial venture, including but not limited to fishing, aquaculture, or the carrying of cargo or passengers for hire. It shall also be satisfactory for such an individual to display a current license necessary for one of the above activities.

a. Any person assigned a priority #2 mooring shall demonstrate to the satisfaction of the Harbor Commission his/her continued compliance with the income requirements.

b. Provisional commercial mooring spaces shall be assigned to a resident or non-resident taxpayer who demonstrates to the satisfaction of the Harbor Commission that he/she has acquired commercial gear or permits for the purpose of entering a water-based marine or fishing business. The provisional mooring privileges shall be revoked unless the person involved demonstrates compliance with the income requirements of this priority category within three (3) years.

Priority #3. One mooring for each other watercraft owned by a resident.

Priority #4. Other non-resident watercraft owners who pay property taxes to the Town of Phippsburg.

Priority #5. Rental moorings installed by commercial marinas or other water dependent businesses.

- J. Notwithstanding the above, at least ten (10) percent of the moorings in any harbor designated for regulations shall be reserved for non-residents in accordance with the provisions of Title 38, MRSA.
- K. Other mooring spaces that may be available shall be filled on a first-come, first-served basis by the Harbor Master.
- L. If the Harbor Master receives more applications for mooring privileges than there are mooring spaces, he/she shall assign spaces as they become available from a waiting list in the order of the priorities of this ordinance and in the order in which names were placed on the waiting list. The Harbor Commission may assess a fee of up to twenty-five dollars (\$25) per year to remain on a waiting list.
- M. A Priority #2 mooring may be transferred from one family member to another provided the mooring is continued in commercial use, and is in compliance with all other provisions of this ordinance. For the purposes of this section and according to state language, “family member” means an assignee’s parent, child or sibling, by birth or adoption, including a relation of the half blood, or an assignee’s spouse.
- N. All new moorings shall be placed in the location designated by the Harbor Master, Assistant Harbor Master, or Harbor Commission. Mooring placement shall be the responsibility of the person requesting a mooring. The size and type of mooring shall be sufficient to hold the watercraft desired to be moored.
- O. All moorings shall use a flotation device large enough to float the chain. All flotation buoys shall be marked with a number assigned to the owner by the Harbor Master or Assistant Harbor Masters. The flotation device is recommended to be white with a horizontal blue stripe per U.S. Coast Guard regulations.
- P. All watercraft moored or anchored in Phippsburg waters shall comply with all local, state, and federal regulations.

## **7. VALIDITY:**

If any provision of this ordinance is found by the courts to be invalid, it shall not affect other provisions of this ordinance.

**8. ABANDONED MOORINGS:**

A mooring may be considered abandoned and the location may be reassigned when:

- A. The Harbor Commission or the Harbor Master is notified in writing by the owner of the mooring.
- B. The mooring is not registered with the Harbor Commission and the owner does not comply within thirty (30) days to written notice that registration is required.
- C. The mooring has not been used for twelve (12) months.
- D. The Harbor Commission may dispose of moorings considered abandoned as it deems necessary. A mooring owner may be held responsible for necessary expenses and fees associated with the removal of an abandoned mooring, plus an additional one hundred dollars (\$100) service charge. Placing a mooring in Phippsburg harbors is considered agreeing to these removal terms.

**9. RECORDS:**

The Town shall maintain accurate records of all registered moorings in regulated harbors. All regulations, decisions, and orders issued by the Harbor Commission shall be in writing and available for public inspection.

**10. PLANNING BOARD:**

The Planning Board shall not approve the construction or installation of new wharves, piers, or other obstructions that interfere with the safe passage by watercraft, or which obstruct the approach to an existing pier or wharf. The existence of a mooring shall not be grounds under this ordinance for denying an application from a waterfront owner seeking permission to construct one pier from a parcel of land that existed in one ownership on March 16, 1991 unless the waterfront property already had a pier or wharf in place.

**11. MOORING CONFLICTS:**

Should moorings permitted or grandfathered under this ordinance conflict with a proposed pier or wharf that has received all the required local, state and federal permits, the Harbor Commission shall require the conflicting moorings to be moved to the extent necessary to allow the pier or wharf to be constructed.

**12. PENALTY:**

Any person who violates any provision of this ordinance, or any owner of a watercraft who allows that watercraft to be in violation of any provision of this ordinance, shall be subject to a fine of not less than ten dollars (\$10) nor more than two hundred and fifty dollars (\$250)

for each offense. Each day a violation continues shall be considered a separate offense. Penalties levied under this ordinance shall be paid to the Town of Phippsburg.

### **13. APPEAL PROCEDURES:**

Any person aggrieved by a decision of the Harbor Commission, Harbor Master, or Assistant Harbor Master(s) may make an appeal to the Board of Selectmen within fourteen (14) days of such decision. The Board of Selectmen will hold an appellate hearing on the appeal (the decision of the Harbor Commission, Harbor Master, or Assistant Harbor Master will be reviewed based on the same evidence as submitted to them). If the appellant does not agree with the decision made by the Board of Selectmen they may appeal within thirty days to the Superior Court under Rule 80B of the Maine Rules of Civil Procedure.

### **14. DEFINITIONS:**

Words used in this ordinance shall have their ordinary dictionary meaning with the exception of the following:

- A. Mooring. Any appliance used to anchor a watercraft and which is not carried aboard as regular equipment when the watercraft is underway.
- B. Resident. A resident is any person:
  - 1. Who makes his/her year-round home in the Town of Phippsburg;
  - 2. Who registers his/her motor vehicles, if any, in the Town of Phippsburg;
  - 3. And who, if eighteen (18) years or older, would be eligible to register and vote in the Town of Phippsburg.
- C. Non-Resident Taxpayer. A person eighteen (18) years or older who owns real estate property in the Town of Phippsburg, but who otherwise does not meet the requirements of B above.
- D. Non-Resident. A person eighteen (18) years or older who does not meet the requirements of 14.B and 14.C above.
- E. Watercraft. The term watercraft shall mean any and all floating apparatus, such as vessels, skiffs, boats, rafts, floats, float planes, houseboats, and housefloats without distinction as to method of propulsion.

# **LAND USE ORDINANCE**

Town of Phippsburg

November 6, 2012



# **LAND USE ORDINANCE**

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### ABBREVIATIONS

CEO	Code Enforcement Officer
DEP	Department of Environmental Protection
DMR	Department of Marine Resources
IF&W	Inland Fish and Wildlife
IBC	International Building Code
IRC	International Residential Code
LPI	Licensed Plumbing Inspector
MRSA	Maine Revised Statutes Annotated
NFPA	National Fire Protection Association
Town	Town of Phippsburg





# LAND USE ORDINANCE TOWN OF PHIPPSBURG, MAINE

The effective date of this Ordinance is November 6, 2012.

This Ordinance repeals and replaces in its entirety the Ordinance entitled "Land Use Ordinance, Town of Phippsburg June, 1993."

## **Section 1. Purpose**

A. This Ordinance seeks to preserve insofar as practical the character of the Town of Phippsburg (Town) as a residential, fishing and vacation community with clean waters, scenic attractiveness and a sense of rurality. We seek also to preserve to the maximum extent possible, traditional rights of landowners to use their lands as they desire, while at the same time protecting nearby residential owners from excessive conflicting uses that degrade property values and damage the attractiveness of the community to the detriment of all.

B. This Ordinance creates standards whereby business, industry and residential properties can live together as good neighbors, thus assuring Towns people opportunities for jobs and economic well-being, as well as a safe, healthy and attractive community in which to live and raise their families.

C. By adopting this Ordinance, the Town seeks to balance the right of landowners to use their land throughout the community for commercial, industrial, municipal, institutional or recreational uses, with the corresponding right of nearby landowners to enjoy their homes without unreasonable disturbance or damage from smoke, noise, fumes, dust, odor, glare, traffic, storm water runoff, or the pollution of ground or surface water resources.

## **Section 2. Authority**

A. This Ordinance is adopted under the powers granted the Town by Title 30, M.R.S.A., Section 3001 and the general home rule powers of the municipality.

## **Section 3. Applicability**

A. This Ordinance applies to all land areas not regulated by the Town of Phippsburg Shoreland Zoning Ordinance adopted June 9, 2009, including all amendments thereto.

#### **Section 4. Effective Date**

A. The effective date of this Ordinance is the date on which the Ordinance was adopted by the Town, November 6, 2012.

#### **Section 5. Availability**

A. A certified copy of this Ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Hard copies shall be made available to the public at a reasonable cost, or may be downloaded at [www.phippsburg.com](http://www.phippsburg.com). Notice of availability of this Ordinance shall be posted.

#### **Section 6. Severability**

A. Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

#### **Section 7. Conflicts with Other Ordinances**

A. Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance (excluding the current Town of Phippsburg Shoreland Zoning Ordinance), regulation or statute administered by the Town, the more restrictive provision shall control.

#### **Section 8. Amendments**

A. This Ordinance can be amended only by a majority vote at any Phippsburg Town Meeting. Such amendments shall not be effective until the date of the vote.

B. Amendments can be initiated only by a majority vote of the Planning Board, or by a majority vote of the Board of Selectmen or by written petition signed by a number of voters equal to at least ten (10) percent of the number of votes cast in the Town at the last gubernatorial election.

## **Section 9. Land Use Standards**

### **A. Lot Size and Setbacks**

1. No dwelling or new business structure shall be constructed on or moved to a lot with an area less than forty thousand (40,000) square feet. Such lot shall have road frontage, public or private, of not less than one hundred and fifty (150) feet unless the conditions of Section 9.A.2. are met.

2. This section shall not prohibit construction on, or creation of, lots that do not have one hundred and fifty (150) feet of frontage on a public or private way, providing the minimum lot size is maintained and providing that a square of one hundred and fifty (150) feet on each side can be located within the boundaries of the lot.

3. A lot on which a dwelling or business is located shall not be subdivided or otherwise reduced in size so as to make the lot less than forty thousand (40,000) square feet nor have less than one hundred and fifty (150) feet of frontage on a public or private way.

4. Notwithstanding the above, the Planning Board may permit an In-law apartment providing all of the following requirements are met:

a. Shall be part of the primary residence;

b. Shall contain no more than five hundred and fifty (550) square feet of living space;

c. Shall share the water, sewer and electricity of the primary residence;

d. Shall provide proof that the existing or proposed septic system is adequate to accept the additional flow as per State of Maine Subsurface Wastewater rules;

e. Shall be occupied only by relatives of no more than three (3) degrees of separation;

f. Shall not be used for commercial residential purposes;

g. Shall be recorded with the deed of the property at the Sagadahoc Registry of Deeds and shall be non transferable;

h. Shall be rendered uninhabitable as an apartment by removal of the kitchen as soon as occupancy has ceased;

j. Shall comply with all other restrictions as may be deemed necessary by the Planning Board.

k. In-law apartment standards shall not be altered by variance.

**5.** Any non-conforming lot of record as of the effective date of this ordinance or subsequent amendment may be built upon providing that all provisions of this ordinance except lot size can be met.

**6.** Setbacks for Principal and Accessory Structures

**a.** All new or relocated structures shall be setback from the traveled way as follows:

**i.** Seventy-five (75) feet from the center of the traveled way along Route 209 (Main Road) starting at the Town Line at Winnegance to the Main Entrance of the State Park, from beginning of Route 216 (Small Point Road) to the Club Road, from the beginning of Sebasco Road to the culvert at the north end of Wat-tuh Lake and from the beginning of the West Point Road to Holland Drive;

**ii.** Fifty (50) feet from the center of the traveled way for all other publicly maintained roads;

**iii.** Ten (10) feet from the edge of the traveled way for privately maintained roads, but in no case less than twenty (20) feet from a property line.

**b.** All new or relocated structures shall be setback from an abutting boundary line by a minimum of twenty (20) feet.

**c.** All new and accessory structures shall be in accordance with the required setbacks unless a variance is granted by the Board of Appeals.

**7.** It shall be unlawful to drill any well for the purpose of human or animal consumption, or to construct or occupy any building as a place of residence, or to place a mobile home or any structure to be used as human habitation within five hundred (500) feet of the Phippsburg Landfill located on the Sam Day Hill Road, Tax Map 43, Lot 33. The five hundred (500) foot setback shall be measured from the limit of waste as currently designated on the Site Plan (sheet 3) of the Phippsburg Landfill Closure Plan by Dufresne-Henry, Inc. (JDP 5-24-94). This prohibition shall not apply to existing residences or wells, or replacement wells.



## **B. Agriculture**

- 1.** All spreading of manure shall be accomplished in conformance with the current Manure Utilization Guidelines published by the Maine Department of Agriculture and the Nutrient Management Law (7 M.R.S.A. Sections 4201-4209).
- 2.** Where soil is tilled, an untilled filter strip of natural vegetation shall be retained between the tilled ground and a property line. The width of this strip shall vary according to the average slope of the land from a minimum of fifty (50) feet [slope under four (4) percent] to a maximum of one hundred and ten (110) feet along the surface of the ground where the average slope of the land is over fifteen (15) percent.
- 3.** Private gardens of less than five thousand (5,000) square feet in area, which are not for commercial use, are exempt from the provisions of this section, except an untilled filter strip of at least ten (10) feet in width from a property line shall be retained.
- 4.** Agricultural practices not in conformance with these standards may be allowed by a Special Exception Permit from the Planning Board. This permit shall not be considered a variance.

## **C. Campgrounds**

- 1.** A campground is any area or tract of land accommodating two (2) or more parties in temporary mobile living quarters, including tents, for which a fee is charged. Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:
  - a.** Campgrounds shall be screened from adjacent lot lines, including public and private ways, by fencing or vegetation having a minimum height of six (6) feet;
  - b.** Campgrounds shall contain a minimum of five thousand (5,000) square feet of land for each site, not including roads, driveways and vegetative wetlands;
  - c.** The areas intended for placement of a recreational vehicle (RV), tent or shelter, and the campgrounds utility and service buildings shall be set back in accordance with all other required set backs;
  - d.** RVs shall not be located on any type of a permanent foundation except a gravel pad;

**e. RV sites shall be limited to:**

**i. The RV and its self-contained expansions (i.e., slide-outs and fabric/rigid canopies with or without enclosures)**

**ii. A free standing deck(s) 30 inches or less in elevation and not to exceed a total of 160 sq. ft.**

**iii. Picnic table(s)**

**iv. Fire pit per campground rules**

**v. Storage shed not to exceed 64 sq. ft.**

**vi. Parking for passenger vehicles**

**f. RV sites shall not be occupied more than 225 days per calendar year. (A Special Exception Permit may be granted by the Planning Board per Section 12.E.1.)**

**g. In order to bring existing conditions into compliance with Section 9.C.1.e all existing non-compliant expansions and structures shall not be replaced or enlarged and shall be removed when the current RV leaves the site.**

**2. Notwithstanding the above requirements, a residential lot containing at least forty five thousand (45,000) square feet may have one commercial campsite for a recreational vehicle (RV) without obtaining a Campground Permit, provided the following conditions are met:**

**a. The lot owner has obtained Home Business determination from the Planning Board;**

**b. The RV site contains a minimum of five thousand (5,000) square feet;**

**c. The RV location meets required setbacks;**

**d. The RV location shall be screened from an adjacent residential lot line by fencing or vegetation having a minimum height of eight feet;**

**e. The RV shall be located only on the existing ground or a gravel pad;**

**f. The RV shall have self-contained water and sewerage facilities;**

*NOTE: Waste water shall be disposed of by a lawful method.*

**g.** The site shall be limited to only the RV and self-contained expansions; e.g., slide-outs and attached fabric canopy with or without screen enclosure;

**h.** The RV site shall be occupied only from April 1<sup>st</sup> through November 30<sup>th</sup>;

**j.** The RV shall not be stored on site from December 1<sup>st</sup> through March 31<sup>st</sup>;

**k.** These conditions shall not be altered by a Board of Appeals variance.

**3.** Wilderness campsites without water-carried sewage facilities shall contain a minimum of twenty thousand (20,000) square feet for each tent or shelter site. This recreational area shall maintain a one hundred (100) foot setback from any residential property line.

#### **D. Earth Moving Activity**

**1.** Any operation involving the excavation, processing, or storage of soil, gravel, rock or other mineral deposits in lawful operation at the time this Ordinance becomes effective shall operate in conformance with all State regulations and use Best Management Practices.

**2.** The following earth moving activity shall be allowed without a Planning Board permit:

**a.** The removal or filling of material incidental to construction, alteration or repair of a building or in the grading and landscaping incidental thereto.

**b.** The removal or filling or transfer of material incidental to the construction, alteration or repair of a public or private way.

#### **E. Mobile Home and Mobile Home Parks**

**1.** A mobile home not in a mobile home park shall meet all the regulations of this Ordinance for a single family dwelling.

**2.** Mobile Home Parks shall meet all Federal, State and Town requirements including the Town of Phippsburg Subdivision Ordinance.

**3.** A continuous landscaped area not less than fifteen (15) feet in width containing evergreen shrubs, trees, fences, walls or any combination which form an effective visual barrier of not less than six (6) feet in height shall be located on all exterior lot lines of the park, except that roadways shall be kept open to provide visibility for vehicles.

## **F. Multi-family Dwelling Units**

1. A two-family dwelling unit (duplex) may be located on a lot that meets all of the requirements for a single family dwelling unit (see Section 9. A), except that such lot shall contain at least eighty thousand (80,000) square feet.
2. Multi-family dwelling units of three (3) or more shall meet the provisions of the Town of Phippsburg Subdivision Ordinance.

*Note: An "In-law apartment" shall not be considered a duplex.*

## **G. Sanitary Standards**

### **1. Subsurface Sewage Disposal**

- a. All subsurface sewage disposal systems shall be located in areas of suitable soil as determined and documented by a State Certified Site Evaluator
- b. All subsurface sewage disposal systems shall require approval from the Licensed Plumbing Inspector prior to any construction including clearing of the site.

### **2. Privies may be permitted under the following conditions:**

- a. All privies shall be located on suitable soils as determined and documented by a State Certified Site Evaluator;
- b. No privy shall be installed prior to a permit being issued by the Licensed Plumbing Inspector;
- c. No plumbing of any kind shall be connected to or discharged into the privy pit.

### **3. Other systems of sanitary waste disposal may be permitted by the Licensed Plumbing Inspector after approval by the Maine Department of Health and Human Services.**

## **H. Signs**

### **1. General**

- a.** A two-sided sign is one sign for the purpose of this section.
- b.** Moving, animated, or mobile chassis mounted signs are prohibited.
- c.** No free-standing or projecting sign shall extend higher than twenty (20) feet above the ground.
- d.** No sign shall be located within five (5) feet of a traveled way (including shoulders) or other lot line.
- e.** One flag for commercial or home business purposes is allowed, the flag shall not exceed fifteen (15) square feet. All personal flags are allowed.
- f.** State Department of Transportation off-premise directional signs are allowed. All other off premise signs which announce, advertise, or name any service or product available, sold or manufactured are prohibited.
- g.** The Town has the authority to remove any signs not meeting the requirements of Section H.
- h.** Signs may be illuminated by shielded non-flashing lights.

### **2. Commercial Signs**

- a.** Free-standing signs: One free standing sign per business is allowed. The sign shall not exceed twenty-five (25) square feet.
- b.** Projecting Signs: One projecting sign per business is allowed. The sign shall not exceed twenty-five (25) square feet.
- c.** Signs on Buildings: Signs shall be limited to the aggregate of one (1) square foot for each linear foot of road side length of the principle structure on the premises. Signs on the building shall not extend beyond the height of the building.
- d.** A business shall have no more than two (2) of the above three (3) types of signs, and the aggregate shall not exceed fifty (50) square feet.

### **3. Home Business Signs**

- a.** Home businesses may display one sign relating to goods or services rendered on the premises. The sign shall not exceed eight (8) square feet.

#### **4. Name Signs**

- a.** Non-commercial name signs shall be allowed, provided such signs, in the aggregate, shall not exceed eight (8) square feet, and providing that not more than two (2) such signs shall be located on the premises.

#### **5. Temporary Signs**

- a.** Two (2) real estate signs, each not exceeding four (4) square feet, are allowed on a property being sold, leased or developed. One directional sign, not exceeding four (4) square feet, leading to the property is allowed.
- b.** Construction site sign (s) shall not exceed thirty two (32) square feet in the aggregate.
- c.** Political campaign signs not exceeding eight (8) square feet shall be allowed.
- d.** All temporary signs shall be removed within seven (7) days after fulfilling their purpose.

#### **6. Exemptions**

- a.** For the purposes of this section, the term “sign” shall not include:
  - i.** Signs erected for public safety and welfare or pursuant to any governmental function;
  - ii.** Directional signs solely indicating entrance and exit at driveway locations, containing no advertising material, and where display area does not exceed two (2) square feet, or extend higher than seven (7) feet above ground level;
  - iii.** Signs relating to trespassing and hunting, not exceeding two (2) square feet;
  - iv.** Signs indicating the residents of a private road, not exceeding twelve (12) square feet in the aggregate.

## **I. Water Quality Protection**

- 1.** No activity shall locate, store, discharge or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxiousness, toxicity, or temperature that run off, seep, percolate, or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or cause nuisances.
- 2.** All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of storm waters.
- 3.** Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

*Note: The Storm Water Management Law (38 M.R.S.A. section 420-D) requires a full permit to be obtained from the DEP prior to construction of a project consisting of twenty thousand (20,000) square feet or more of impervious area or five (5) acres or more of a developed area in an urban impaired stream watershed or most-at-risk lake watershed, or a project with one (1) acre or more of developed area in any other stream, coastal or wetland watershed. A permit-by rule is necessary for a project with one (1) acre or more of disturbed area but less than one (1) acre impervious area [twenty thousand (20,000) square feet for most-at-risk lakes and urban impaired streams] and less than five (5) acres of developed area. Furthermore, a Maine Construction General Permit is required if the construction will result in one (1) acre or more of disturbed areas.*

## **J. Driveways and Other Private Ways**

- 1.** No new driveways or other private ways, which intersect with a Town or public right of way, shall be constructed until a permit is issued by the Town Road Commissioner. A permit shall be issued only if the Road Commissioner finds the driveway or other private way shall provide reasonable and safe access and egress to and from the public road or way.
- 2.** Driveways and other private ways shall conform to the following standards:

*Note: In the interest of public safety, a driveway or other type of way should provide reasonable access and egress for fire and rescue equipment.*

**a.** Driveways and other private ways shall be located, constructed and maintained in such a manner that minimal erosion hazard results. Adequate provision shall be made to prevent soil erosion and sedimentation of surface waters in accordance with current DEP guidelines;

**b.** Driveway and other private way crossings of water courses shall be kept to the minimum number necessary;

**c.** All cut and fill banks and areas of exposed material soil shall be revegetated or otherwise stabilized in accordance with current DEP guidelines.

**3.** Bridges and culverts of adequate size and design shall be provided for all driveway and other private way crossings of water courses which are to be used when surface waters are not frozen.

**a.** Bottoms of culverts shall be installed at or below stream bed elevation in accordance with current DEP guidelines.

**b.** The maintenance of such bridges, culverts and ditches shall be the responsibility of the owner(s) of the driveway or other private way.

**4.** The Road Commissioner may impose conditions to assure that bridges, culverts and roadside ditches that may be needed are sufficient to prevent flooding of the public way and other property.

**5.** The Planning Board may issue a permit which waives or alters the requirements for a bridge, culvert, driveway or private way construction standards.

*Note: The size of new or replacement bridges and culverts shall comply with current DEP standards for fish and aquatic organism passage. All streams are assumed to be fish passage ways unless ruled differently by the DEP, IF&W, or DMR.*

## **K. Timber Harvesting**

**1.** Timber harvesting is regulated by the State of Maine Department of Conservation, Bureau of Forestry.



## **L. Business Uses**

### **1. New Business Permit**

**a.** A new business (see definition) shall not begin operation, unless exempted under L. 2, without first obtaining a permit. A change of ownership or management, of an existing business without any change in operation shall require a review within ninety (90) days by the Planning Board for a transfer of the business permit. Any cessation of use exceeding two (2) years, expansion or change of use of an existing business shall be considered a new business for the purposes of this Ordinance and shall require a new business permit. The Town shall provide application forms.

**b.** A new business permit shall not be issued until a public hearing has been held. Notice of a public hearing shall be posted in two public places and published in a newspaper with general circulation in the Town at least seven (7) days and not more than fourteen (14) days prior to the hearing.

**c.** Applicant shall notify abutters of the proposed business plan. Proof of such notice shall be presented with the application at the public hearing. Acceptable proof shall consist of either an abutter's signature on the application form, a signed abutter's statement on a separate document, or a certified mail return receipt showing either a signature or post office failure to deliver to the abutter's last known address.

**d.** New business hearings shall be held by the Planning Board. A quorum shall be any five (5) members of the Planning Board. Those members present at the hearing shall, by a majority vote, approve, approve with conditions, or deny all applications for a new business. Members shall render their decisions in writing, specifying the reasons for denial or imposition of conditions.

**e.** The business permit shall be posted at the place of business and visible to the public.

**f.** A new business permit shall become void one (1) year after issuance, if the business is not operational.

**g.** The permitting authority may grant up to a one (1) year extension.

**h.** Applicant shall pay a \$50.00 new business permit fee plus \$45.00 for each public hearing or site walk to defray the cost of advertising. The standard Planning Board fee shall apply to a transfer of business permit.

## **2. Home Business**

- a.** Home business applicants need not obtain a new business permit but shall seek Planning Board determination that the proposed home business qualifies per this Section. Standard Planning Board fee shall apply.
- b.** Home businesses shall be carried on wholly within the principal building or other structure accessory to it, or on the grounds of the property in a manner such that impact on neighbors is minimal. The business shall be clearly secondary to the use of the dwelling unit for residential purposes.
- c.** No unreasonable nuisance, traffic congestion, waste discharge, offensive noise, vibration, smoke, dust, odors, heat, glare or radiation shall be generated.
- d.** Reasonable and safe access and egress as well as parking requirements shall be provided.
- e.** Signs shall be restricted to one on-premise totaling not more than eight (8) square feet.
- f.** Not more than two (2) persons other than family members residing in the home shall be employed in a home business.
- g.** Home businesses may not expand beyond the limits imposed by this section without fulfilling all the requirements of this Ordinance and obtaining a permit under L. 1.
- h.** The following are examples of a home business:
  - i.** Sale of home-grown vegetables and plants, crafts made in the home, antiques, and other traditional home business activities that have no significant impact on the character of a residential neighborhood;
  - ii.** Service businesses such as plumbing, carpentry, and home maintenance services in which at least seventy five (75) percent of the activities take place on the premises of the customer;
  - iii.** Home beauty and barbershops;
  - iv.** Home mechanics shop;
  - v.** Sale of fish or other marine products harvested /landed by the home business owner(s);

**vi.** Wharves and piers, storage buildings and the outdoor storage of boats, traps, nets, and other gear used in the commercial harvesting of marine products;

**vii.** Use of a residence to provide accounting, insurance or tax return services or similar activity;

**viii.** Incidental use of a home as an office for municipal business activities;

**ix.** Yard or garage sales, limited to four per year. The duration of each sale shall not exceed three (3) consecutive days;

**x.** A Bed and Breakfast establishment with not more than two (2) rental rooms may serve breakfast to overnight guests only. No meals shall be served after 11:30 a.m. Such establishments shall meet State requirements and Local Plumbing Inspector approval that the waste water system is adequate;

**xi.** One (1) commercial campsite per Section 9.C.2.

**xii.** Businesses that the Planning Board may determine are substantially similar to the above.

### **3. Buffer Zones**

**a.** No business shall be established, except as permitted by the Planning Board under the provisions of this section or as exempted in L.2, unless the following buffer zones are provided between the business, including any accessory buildings and parking lots, and adjacent residential lot lines:

**i.** Commercial and other non-residential buildings or other commercial or industrial activities shall have a minimum side and rear yard distance of at least one hundred (100) feet from residential lot lines.

**ii.** Notwithstanding the above, restaurants with musical entertainment, bars, dance halls, clubs offering musical entertainment, motels, trailer parks, mobile home parks, campgrounds, kennels and boarding kennels, industrial uses, and shopping centers shall have a minimum rear and side yard distance of at least one hundred and fifty (150) feet from the nearest residential lot line.

**b.** The Planning Board may approve substitute buffer zones providing the purposes of this Ordinance are maintained. Substitute buffer zones may be approved when the topography of the land, the nature of the vegetation, or building(s) provides screening that is equal in protection to the required width of a buffer zone. Substitute buffer zones may also be approved when the character of a neighborhood is predominantly commercial.

**i.** The applicant shall have the burden of demonstrating that the topography of the land, the nature of the vegetation, or building(s) provides screening that is equal in protection to the required width of the buffer zone, or that the character of the neighborhood is predominantly commercial.

**c.** The Planning Board shall approve, approve with conditions or deny all applications for substitute buffer zones.

**d.** Substitute buffer zones shall not be considered a variance.

#### **4. Standards for Commercial and Industrial Uses**

**a.** The applicant shall have the burden of demonstrating that the proposed business shall be located and designed so as to prevent unreasonable nuisance to nearby properties, parking on adjacent public roads, danger to children, unsanitary waste disposal, noise, vibration, smoke, fumes, dust, noxious odors, heat, glare or radiation that exceeds conditions previously detectable at the lot boundaries of other properties in the general area.

**b.** New businesses shall also demonstrate that they meet the following standards and requirements:

**i.** The natural landscape shall be preserved insofar as practical by practical. New landscaping may be required that will define, soften or screen the appearance of the business from adjacent public ways or nearby residential areas. Retail establishments catering to the general public need not be screened from public roads;

**ii.** Businesses shall provide safe access and egress without causing traffic congestion;

**iii.** Surface waters shall be drained so as not to damage adjacent lands;

**iv.** Exposed storage areas, fixed machinery, and utility buildings shall have sufficient setbacks and screening to provide a visual buffer sufficient to prevent unreasonable adverse impact on other land uses in the area;

v. Evidence shall be provided that sufficient water is available for the proposed use and that adequate water for existing users shall not be diminished;

vi. New businesses shall provide sanitary facilities sufficient for its employees and, where appropriate, customer facilities may be required;

vii. Junkyards and automobile graveyards as defined by State Law (currently, Title 30, M.R.S.A., Section 3752) shall not locate within six hundred (600) feet of any public way or adjacent residential property line unless the Planning Board permits a substitute buffer zone per Section 9.L.3.b. However, no junkyard or automobile graveyard shall be located less than one hundred (100) feet from the nearest public road or right of way or adjacent property lines. In no instance shall a junkyard or automobile graveyard be located so that discarded vehicles or other wastes are visible from public ways or adjacent properties.

c. The following new commercial and industrial uses are prohibited:

i. Chemical and bacteriological laboratories;

ii. Commercial storage of chemicals including herbicides, pesticides or fertilizers for wholesale distribution.

#### **M. Temporary Residential Uses**

1. A mobile home or recreational vehicle that otherwise meets the standards of this Ordinance, with a Certificate of Occupancy may be located on a lot for up to twenty four (24) months to provide temporary housing during the construction of a new home that is being constructed wholly or in part by the owner of the land. Upon completion of the home or within twenty four (24) months, whichever is less, the Certificate of Occupancy for the temporary housing shall expire and any mobile home shall be removed within sixty (60) days.

2. Friends and relatives may visit Phippsburg residents and locate recreational vehicles on a lot with a permanent residential structure for up to seven consecutive days without a permit. After seven days, the Codes Enforcement Officer may issue up to two (2) seasonal permits, at any given time, for up to a total of one hundred and twenty (120) days per calendar year, to the property owner of the lot where the recreational vehicle is located. These provisions do not apply to any commercial or rental purposes.

*Note: For a seasonal permit to be issued, the existing dwelling must meet the standards of the State Plumbing Code. All temporary occupants must use the sanitary facilities in the existing dwelling unless the unit has a self-contained sanitary system. Wastes from recreational vehicles shall not be connected to the septic system of the dwelling being visited. The applicant must also produce written authorization from an approved dumping station.*

**3.** The Codes Enforcement Officer may issue up to two (2) seasonal permits, at any given time, for recreational vehicles or tent sites to be located on a vacant lot for temporary non-commercial use for up to one hundred and twenty (120) days per calendar year. A seasonal permit must be issued to the property owner of the lot where the recreational vehicle or tent site is located. The applicant must provide a written sewage disposal plan or a written agreement from an approved dumping station for the disposal of the applicant's waste water, when applicable.

**4.** No permanent foundation, except for gravel pads, shall be permitted and no permanent structure shall be attached to any temporary dwelling.

## **Section 10. General Building Requirements**

### **A. Permits Required**

1. It shall be unlawful to construct, add to, alter or to commence the construction, addition, or alteration of a building, mobile home or structure where such construction or addition exceeds one thousand (1,000) dollars in value, without first obtaining a permit from the Codes Enforcement Officer (CEO). Permits shall be posted on site in a visible location.

2. The one thousand (1,000) dollar exemption from the need to have a building permit shall not apply to the construction of a foundation or slab for a dwelling unit. No work shall be done on a foundation for a house, mobile home slab, cottage or other dwelling unit until the CEO has reviewed the site for compliance with the provisions of this Ordinance and issued a permit.

3. All applications shall be accompanied by a fee in accordance with the following estimated value of construction schedule:

\$1,000 to \$5,000	= \$20
\$5,001 to \$10,000	= \$40
\$10,001 to \$100,000	= \$40 plus \$1.50 per \$1,000
\$100,001 to \$200,000	= \$40 plus \$2.50 per \$1,000
\$200,001 and over	= \$40 plus \$3.50 per \$1,000

If the estimated value of the project is deemed unreasonable by the CEO, the CEO has the right to assess a renovation at seventy five (75.00) dollars per square foot and new construction at one hundred twenty five (125.00) dollars per square foot. The fee for construction commenced before a permit is issued shall be twice the normal fee.

4. Permits shall expire one (1) year from the date of issuance unless a substantial start is made in construction or in the use of the property during that period. If a substantial start is made within one (1) year of the issuance of the permit, the applicant shall have one (1) additional year to complete the project, at which time the permit shall expire. A one (1) year extension may be granted by the permitting authority.

5. No permit shall be issued for new construction until a plumbing permit has been obtained for the treatment and disposal of the sanitary wastes when such is required by the planned use of the structure.

6. No permit shall be issued for additional bedrooms or uses until the applicant demonstrates that the waste water system is lawful for both the existing structure and the proposed changes.

7. All modifications to existing structures or change of use shall be in conformity with all provisions of this Ordinance, the Maine State Plumbing Code and Subsurface Waste Water Disposal Rules. No permit shall be issued for activities prohibited by this Ordinance or other Town or State codes, laws and ordinances.

## **B. Construction Standards**

1. All dwellings and mobile homes shall be erected on solid ledge or foundation walls not less than seven (7) inches thick and carried not less than twelve (12) inches below the frost line, or upon a concrete slab not less than six (6) inches thick, or upon pressure treated or concrete posts that extend to solid ledge or to at least four (4) feet into the earth.

2. All construction and materials shall conform to generally accepted standards of good practice and shall conform to all applicable State laws and Town regulations and ordinances.

3. New dwelling construction and renovations shall conform to the following standards:

a. A smoke alarm shall be installed in the following locations:

i. In each sleeping room

ii. Outside each separate sleeping area in the immediate vicinity of the bedrooms.

iii. On each additional story of the dwelling, including basements but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

iv. When more than one smoke alarm is required to be installed within an individual dwelling unit the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.

v. All smoke alarms shall be listed and installed in accordance with the provisions of the State Building Codes and the household fire equipment provisions of NFPA 72.



**b.** There shall be two (2) inches or more clearance between combustible materials and masonry chimneys.

**c.** All masonry chimneys must be lined.

**d.** All hallways shall have a minimum finished width of thirty-six (36) inches.

**e.** Dwelling units shall have a minimum of two (2) exterior doors and each must have a minimum finished cleared opening of thirty-four (34) inches.

**f.** Walls and doors between attached garages and living spaces shall be built of fire shield material with a one (1) hour rating.

**g.** Multi-family structures shall contain no more than ten (10) dwelling units. Such units shall be separated by fire shield material with a one (1) hour rating and be connected to common water and waste water systems. (Structures containing three (3) or more units are subject to Subdivision review.)

**h.** No building shall exceed forty (40) feet in height, measured from the mean original grade on the downhill side.

**j.** All building shall conform to Title 10 Chapter 1101, Maine Model Building Code (IBC 2003 or IRC 2003) as amended.

### **C. Solar Access**

**1.** No new structure or addition shall be built that casts a shadow on south-facing windows or other solar collecting devices on neighboring properties on December 22<sup>nd</sup>, unless the owners of such devices and windows shall agree in writing that they do not object to such shading. Neither shall any new vegetation be allowed to grow so as to cast such a shadow without the owner of a solar device agreeing. Any tree, shrub or any planted landscaping growing at the time of the construction or installation of the solar device may be allowed to remain and grow out its natural life.

### **D. Mobile Homes**

**1.** Mobile homes shall be allowed on any lot of land where a single family home would be allowed after plumbing and building permits have been issued. No permits shall be issued unless that owner provides evidence demonstrating that the mobile home meets the standards of the National Manufactured Housing Construction and Safety Standards Act of 1974, U. S. Code, Title 42, Section 5401 et seq.

#### **E. Debris from Destroyed Buildings**

1. Debris and waste from buildings destroyed by fire, deterioration, accident, and storms or flooding shall be removed by the owners within six months of being notified to do so by the Codes Enforcement Officer.

#### **F. Structure Demolition or Removal Notice**

1. Property owners and contractors shall notify the Codes Enforcement Officer before the demolition of any structure can take place. The Codes Enforcement Officer will, in turn, notify the Phippsburg Historical Preservation Commission who will determine whether that structure is associated with events that have made a significant contribution to the broad patterns of our history; or that is associated with the lives of persons significant in our past, or embodies the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possesses high artistic values, or that have yielded, or may be likely to yield, information important in prehistory or history (National Historic Register of Historic Places). If the structure is deemed not to be of historical significance, the Phippsburg Historical Preservation Commission will notify the Codes Enforcement Officer that the demolition delay should be withdrawn. This determination will be made as soon as possible, but no later than 45 days after Commission notification from the Code Enforcement officer. If the property is deemed to be of significant historical value, the Phippsburg Historical Preservation Commission will negotiate with the owner or contractor for permission to move the structure or negotiate/seek a suitable alternative for the structure.

#### **G. Certificate of Occupancy**

1. No structure shall be used for residential purposes until a Certificate of Occupancy is issued by the Codes Enforcement Officer.
  - a. No Certificate shall be issued until the Plumbing Inspector certifies that the dwelling has sanitary facilities installed and operating that meet all the requirements of the State Plumbing Code and all local ordinances.
2. A structure that has not been used for residential purposes for more than five (5) years shall be considered a new residential structure and shall require a Certificate of Occupancy.
3. The penalty for occupying a structure without first receiving a Certificate of Occupancy shall be twenty (20.00) dollars per day.

## **Section 11. Non-Conformance**

### **A. Grandfathering**

1. All uses of land and buildings existing at the time of adoption of the Building Code for the Town of Phippsburg (enacted March, 1970), or which have been developed legally since then may continue even though such use does not conform to the provisions of this Ordinance.

### **B. Non-Conforming Lots of Record**

1. Any single lot of record that existed on the effective date of the original Phippsburg Building Code (March 1970) may have a single family dwelling, provided that:

- a. Such lot shall be in separate ownership and not contiguous with any other lot of the same ownership.
- b. The lot does not already have a habitable dwelling.
- c. All other provisions of this Ordinance shall be met.
- d. Soils are suitable for wastewater disposal.

2. If two or more contiguous lots or parcels are in single ownership of record at the time of the adoption of the original Phippsburg Building Code in March, 1970, and if all or part of the lots do not meet the dimensional requirements of this Ordinance, the lands involved shall be considered a single parcel for the purposes of this Ordinance and no portion of said parcel shall be built upon which does not meet the dimensional requirements of this Ordinance; nor shall any division of the parcel be made which creates any dimension or area below the requirements of this Ordinance.

3. A single lot containing more than one dwelling may be divided into two or more lots each containing a dwelling, providing that the person proposing the division demonstrates that the existing sewage disposal systems are functioning properly and, in the event of a future malfunctioning of the system or systems, the disposal systems can be replaced or enlarged to comply with the Maine State Plumbing Code.

4. A non-conforming lot shall not be made more non-conforming. This requirement shall not be altered by a variance.

### **C. Non-Conforming Structures**

1. Any lawful building or mobile home or other structure existing at the time of the effective date of the original adoption of the Phippsburg Building Code, March, 1970, or which was constructed legally prior to the passage of this Ordinance, may be continued and repaired although it does not conform with these standards.
2. A non-conforming structure may be extended or enlarged with a Planning Board permit.
3. The CEO shall not issue a building permit until a Planning Board permit is issued.
4. An existing non-conforming structure which is destroyed by storm, fire or other accident may be rebuilt if reconstruction is commenced within two years. Once operations have started, if no additional work is done for two (2) years, the building permit shall become void. Reconstruction will comply with all current Town Ordinances and State regulations.
5. A non-conforming structure shall not be made more non-conforming. This requirement shall not be altered by a variance.

## **Section 12. Administration**

### **A. Administering Bodies and Agents**

1. Code Enforcement Officer (CEO)
  - a. The CEO shall be appointed or reappointed annually by July 1st. The person so named shall also be qualified and fulfill all duties of a Licensed Plumbing Inspector.
2. Planning Board
  - a. The Planning Board shall be created in accordance with the provisions of State law.
3. Board of Appeals
  - a. The Board of Appeals shall be created in accordance with the provisions of State law.

## **B. Permits Required**

- 1.** After the effective date of this Ordinance no person shall engage in any activity or use of land or structure requiring a permit without first obtaining a permit from the appropriate permitting authority. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.
- 2.** A curb cut Entrance Permit is required from Maine Department of Transportation (MDOT) for all State roads and from the Phippsburg Road Commissioner for Town maintained roads.
- 3.** Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.
- 4.** A permit is not required for the replacement of an existing road culvert on private ways.
- 5.** A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's Level 1 or Level 2 approved lists, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures. Prior to excavation, a copy of documentation showing size and scope shall be provided to the Codes Enforcement Officer.

## **C. Permit Application**

- 1.** Every applicant for a permit shall submit a completed application to the appropriate official as indicated in Section 12.A. The forms shall be provided by the Town.
  - a.** Building permit applications shall include a scaled site plan and building plan not to exceed 11"x17" or in digital format. Fees shall be in accordance with Section 10. A. 3.
  - b.** Planning Board applications shall include appropriate fees and six (6) copies of the following:
    - i.** The application form,
    - ii.** Any other supporting information,
    - iii.** And when required, legible scaled site plans and building plans no smaller than 11"x17".

2. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property, or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
3. All applications shall be dated, and the CEO or Planning Board, as appropriate, shall note upon each application the date of its receipt.
4. If the proposed use will require the installation or expansion of a subsurface wastewater disposal system, a valid permit from the LPI shall be required.

#### **D. Procedure for Administering Permits.**

1. Within thirty five (35) days of the date of receiving an application, the CEO or Planning Board shall notify the applicant that the application is complete, or that specified additional material is needed. The CEO or the Planning Board, as appropriate, shall approve, approve with conditions, or deny in writing, all permit applications within thirty five (35) days of receiving a completed application.

*NOTE: If the Planning Board has a waiting list of applications, a decision on the application shall occur within thirty five (35) days after the first available date on the Planning Board's agenda following receipt of the completed application, or within thirty five (35) days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.*

2. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.
3. After the submission of a complete application to the Planning Board, the Board shall approve an application, or approve it with conditions, if it makes a positive finding based on the information presented that the proposed use:
  - a. Will maintain safe and healthful conditions;
  - b. Will not result in water pollution, erosion, or sedimentation to surface waters;
  - c. Will adequately provide for the disposal of all wastewater;
  - d. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
  - e. Will protect archaeological and historic resources as designated in the Town's Comprehensive Plan;
  - f. Will avoid problems associated with flood plain development and use;

g. Is in conformance with the provisions of Section 9, Land Use Standards.

4. If a permit is approved with conditions or denied, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance, regulation, or statute administered by the municipality.

5. To ensure conformity with the purposes and provisions of this Ordinance, permits granted under this Section may be subject to conditions.

#### **E. Special Exception Permit**

1. A special exception permit may be issued by the Planning Board only if the Board deems the applicant's proposal satisfies the purpose of this Ordinance as stated in Section 1.

#### **F. Expiration of Permit**

1. Permits shall expire one (1) year from the date of issuance. If a substantial start is made within one (1) year of the issuance of the permit, the applicant shall have one (1) additional year to complete the project, at which time the permit shall expire. An additional one (1) year extension may be granted by the permitting authority, at no fee, if the site is re-vegetated.

#### **G. Installation of Public Utility Service**

1. A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate town officials or other written arrangements have been made between the Town officials and the utility company.

#### **H. Appeals / Variances**

1. The Board of Appeals shall have powers and duties granted in the current "Board of Appeals Ordinance."

2. An aggrieved party must file an application for appeal, on a form provided by the Town, within thirty (30) days of the granting or denial of a permit.

## **I. Enforcement**

### **1. Nuisance**

- a.** Any violation of this Ordinance shall be deemed to be a nuisance.

### **2. Code Enforcement Officer (CEO)**

**a.** It shall be the duty of the CEO to enforce the provisions of this Ordinance. If the CEO shall find that any provision of this Ordinance is being violated, the CEO shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the Board of Selectmen and be maintained as a permanent record.

**b.** The CEO shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The CEO shall also investigate all complaints of alleged violations of this Ordinance.

**c.** The CEO shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.

### **3. Legal Action**

**a.** When the above action does not result in the correction or abatement of the violation or nuisance condition, the Board of Selectmen, upon notice from the CEO, is hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of The Town of Phippsburg. The Board of Selectmen, or its authorized agent, is hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized Town official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure, or use will result in a threat or hazard to public health and safety, or will result in substantial environmental damage.



#### **4. Fines**

**a.** Any person, including but not limited to a landowner, or a landowner's agent or contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. section 4452. All fines levied under this Ordinance shall be paid to the Town of Phippsburg.

*NOTE: Current penalties include fines of not less than one hundred (100) dollars nor more than two thousand five hundred (2500) dollars per violation for each day that the violation continues.*

## Section 13. Definitions

**A.** In this Ordinance the word **person** includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual. The present **tense** includes the future tense. The singular number includes the plural; the plural includes the singular. The word **shall** is mandatory; the word **may** is permissive. The word **lot** includes the words **plot** or **parcel**. In case of a difference of meaning or implication between the text of this Ordinance and any map or illustration, the text shall control.

**B.** Terms not defined shall have the customary and applicable dictionary meaning, found in Randall House Webster's Dictionary 2nd Edition, copyright 2001 by Randall Publishing, Inc. A copy of this dictionary is located in the Phippsburg Town Hall.

**C.** The following definitions apply:

**Abutter** - A person who owns adjacent property including property directly across any road.

**Accessory Structure** - A structure which is incidental and subordinate to the principal structure.

**Aggrieved Party** - An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any group of five (5) or more persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

**Agriculture** - Production, keeping or maintaining plants or animals. Agriculture does not include forest management and timber harvesting activities.

**Alteration** - Any change, addition, or modification in construction, or change in the structural members of a building, such as bearing walls, columns, posts or beams.

**Aquaculture** - The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

**Bedroom** - A room furnished and used for sleeping

**Buffer Zone** – An area serving to neutralize potential conflict

**Building** - See Structures

**Building Height** – See Height

**Camper** - A portable structure designed to be used as a temporary dwelling for travel and designed to fit upon or in the back of a truck, including converted buses or other vehicles. This structure shall not be used as a permanent dwelling. (Also see recreational vehicle RV)

**Campground** - Any area or tract of land accommodating two (2) or more parties in temporary mobile living quarters, including tents, for which a fee is charged

**Cluster Development or Planned Unit** - Land under unified management, planned and developed as a whole according to comprehensive and detailed plans, including street, utilities, lots and building sites, site plans and design principles for all buildings intended to be located, constructed, used and related to each other, and for other uses and improvements on the land. Developments may be single operation or a programmed series of operations including all buildings and lands, with provisions for operation and maintenance of such areas and improvements and facilities necessary for common use by the occupants of the development.

**Code Enforcement Officer (CEO)** - A person appointed by the Board of Selectmen to administer and enforce this Ordinance. Reference to the CEO shall be construed to include the Building Inspector and Plumbing Inspector, where applicable.

**Commercial Use** - The use of land, buildings, or structures, the intent of which is the production of income. This includes the rental of a residential dwelling unit. (The rental of a residential dwelling unit shall not require a business review by the Planning Board)

**Complete Application** - All documentation necessary for review and decision by the permitting authority.

**DEP** - Maine State Department of Environmental Protection

**Development** - A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction that does not naturally occur.

**Dimensional Requirements** - Numerical standards relating to spatial relationships including but not limited to setback, lot area, frontage and height.

**Disability** - A physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist.

**Driveway** - A vehicular access-way of no more than five hundred (500) feet in length, serving no more than two (2) residential dwelling units.

**Duplex** - A single structure containing two (2) separate and distinct residential dwelling units.

**Dwelling** - A fixed structure, containing one (1) or more dwelling units.

*Note: see Residential Dwelling Unit.*

**Emergency Operations** - Operations conducted for the public health, safety or general welfare, e.g., protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

**Erosion and Sedimentation Control** – All earth moving or development activities shall be in compliance with current DEP regulations.

**Essential Services** - Gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

**Expansion of a Structure** - An increase in the floor area or volume of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

**Family** - One or more persons occupying the premises and living as a single residential dwelling unit.

**Floor Area** – See Square Footage

**Forest Management Activities** - Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting, and the construction, creation or maintenance of roads.

**Forest Stand** - A contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

**Forested Wetland** - A freshwater wetland dominated by woody vegetation that is nineteen feet six inches (19.5 ft.) tall or taller.

**Foundation** - The supporting substructure of a building.

**Freshwater Wetland** - Freshwater swamps, marshes, bogs and similar areas.

**Frontage, Street/Road** - The distance as measured along the center of the traveled way between the intersections of the side lot lines with the traveled way.

**Grandfathering** – To exempt from a new ordinance, restriction or requirement that would affect prior rights and privileges.

**Ground Cover** - Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor.

**Harvest Area** - The area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than ten (10) acres within the area affected by a harvest.

**Height** - The vertical distance between the mean original grade (**prior to construction**) on the down hill side of the proposed structure and its highest point, excluding chimneys, steeples, antennas, and similar appurtenances which have no floor area.

**High Intensity** - A use or change of use that would result in an acute detrimental change of environmental, safety, traffic, noise and density levels.

**Home Business** - An occupation or profession which is customarily conducted on or in a residential structure or property and:

1. Is clearly incidental to and compatible with the residential use of the property and surrounding residential uses;
2. Employs no more than two (2) persons other than family members residing in the home.

**Increase in Non-Conformity** - Any change in a structure or property which causes further deviation from the dimensional standard(s).

*Note: A non-conforming structure may be expanded laterally provided that the expansion extends no further into the required setback than the closest portion of the existing structure. Included in this allowance are expansions which in-fill irregularly shaped structures.*

**Individual Private Campsite** - An area of land which is not associated with a campground, but which is developed for repeated camping by only one group, not to exceed ten (10) individuals. Site improvements may include but not be limited to a gravel pad or tent platform, parking area and fire place.

**Industrial** - The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals.

**In-law Apartment** – A one bedroom apartment limited to non-commercial use by relative(s) of the resident owner.

**Institutional** - A non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or town owned or operated building, structure or land used for public purposes.

**Land Management Road** - A route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.

**Licensed Forester** - A forester licensed under 32 M.R.S.A. Chapter 76.

**Lot** - A parcel of land in single ownership, described on a deed, plat, or similar legal document.

**Lot area** - The area of land enclosed within the boundary lines of a lot.

**Lot Lines** - The lines bounding a lot.

**Lot Line, Front** - On an interior lot, the line separating the lot from the street/road. On a corner or through lot, the line separating the lot from either street/road.

**Lot line, Rear** - The lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than ten (10) feet long, lying farthest from the front lot line. On a corner lot, the rear lot line shall be opposite the front lot line of least dimension.

**Lot Line, Side** - Any lot line other than the front lot line or the rear lot line.

**Lot of Record** - A parcel of land, the dimensions of which are shown on a document or map on file with the County Register of Deeds or in common use by Town or County Officials.

**Market Value** – The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

**Mineral Exploration** - Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

**Mineral Extraction** - Any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

**Minimum Lot Width** - The closest distance between the side lot lines of a lot.

**Mobile Home** - A structure designed as a dwelling unit for location on a permanent foundation, and containing sleeping accommodations, a toilet, a tub or shower bath, and kitchen facilities, including major appliances and furniture, with plumbing and electrical connections provided for attachment of outside systems; and designed to be transported after fabrication on its own wheels. A mobile home shall contain not less than three hundred and twenty (320) square feet of gross floor area. Mobile homes shall be allowed on any lot of land where a single family home would be allowed, but no mobile home may be moved into Phippsburg or moved onto a lot in Phippsburg before plumbing and building permits have been issued. No permits shall be issued unless that owner provides evidence demonstrating that the mobile home meets the standards of the National Manufactured Housing Construction and Safety Standards Act of 1974, U. S. Code, Title 42, Section 5401, et seq.

**Mobile Home Park-** A plot of land laid out to accommodate three or more mobile homes.

**Multi-unit Residential** - A residential structure containing three or more residential dwelling units.

**Native** - Indigenous to the local land area.

**New Business-** For the purposes of this Ordinance, a new business is a business that meets one or more of the following criteria:

1. A business beginning operations that does not qualify as a home business under this Ordinance.
2. An existing business that expands the area devoted to retail customers by more than twenty (20) percent.
3. An existing business that converts existing space to a different line of business, e.g., the conversion of a storage area to retail use.
4. An existing business that moves or expands to a new location or onto land that is not contiguous to the lot where the business began.
5. A home business that expands to the point where it no longer meets the criteria for home business under this Ordinance.
6. A grandfathered business that is sold, leased or rented to other operators shall require, without a public hearing, a transfer of permit review from the Planning Board.

**Non-conforming Condition** - A lot or structure which is allowed solely because it was in lawful existence on the effective date of this Ordinance or any subsequent amendment.

**Non-conforming Lot of Record** - A lot of record that does not meet the lot area or road frontage requirements of this Ordinance.

*Note: See Section 11.B.*

**Non-conforming Structure** - A structure which does not meet any one or more of the following dimensional requirements: setback, height, or lot coverage, but which is allowed solely because it was in lawful existence on the effective date of this Ordinance or any subsequent amendment.

**Park Model** – For the purpose of this Ordinance, Park Models shall be considered a Recreational Vehicle (RV) if it meets the definition of a Recreational Vehicle.

**Permanent Foundation** - A continuous enclosed masonry foundation, heavy concrete slab or wood foundation treated to prevent decay.

**Permitted-** an allowed use only with written approval from the permitting authority.

**Person** - An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

**Planned Unit** – See Cluster Development

**Portable Structures** - Including but not limited to rigid framed tents and tractor trailer bodies.

**Premises** - One or more lots which are in the same ownership and are contiguous or separated only by a road or water body, including all buildings, structures, and improvements.

**Principal Structure** - The building in which the primary use of the lot is conducted.

**Private Club** - Access by membership only.

**Private Recreational Facility** - Access by membership only.

**Public Facility** - Any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

**Recreational Facility** - A place designed and equipped for the conduct of sports, leisure activities, and other customary and usual recreational activities.

**Recreational Vehicle (RV)** - A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with a State Division of Motor Vehicles.

**Renovation** – An interior or exterior upgrade that may or may not include structural change.

**Replacement System** - A system intended to replace an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure.

**Residential Dwelling Unit** - A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes, and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

**Residential Lot Line** - The portion of a property line within two hundred (200) feet of a dwelling.



**Residential Structure** - A residential dwelling unit built for the support, shelter or enclosure of persons.

**Riprap** - Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

**Road** – Public and private ways such as streets, avenues and boulevards.

**Seasonal** - A use, structure or activity that is in place for seven (7) months or less per calendar year.

**Service Drop** - Any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. In the case of electric service:

a. The placement of wires or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right of-way; and

b. The total length of the extension is less than one thousand (1,000) feet.

2. In the case of telephone/cable service:

a. the extension, regardless of length, will be made by the installation of telephone/cable wires to existing utility poles, or

b. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

**Setback** - The required horizontal distance from an abutting property line or road to the closest part of any structure.

**Sign** - A name, identification, description, display or illumination which is affixed to, painted or represented, directly or indirectly upon a building, structure, parcel or lot and which relate to an object, product, place, activity, person, institution, organization or business.

**Skid Road or Skid Trail** - A route repeatedly used by machinery or animal(s) to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

**Special Exception Permit** - A permit issued by the Planning Board for a special exception use. A special exception permit may be issued only after the Planning Board deems that the proposal satisfies the purpose of this Ordinance as stated in Section 1.

**Square Footage** - The sum of the horizontal areas of the floor(s) plus the horizontal area of any unenclosed portions of a structure such as porches and decks, calculated by the external limits.

**Structures** - Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, standby generators, poles, wiring, and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes, including but not limited to, rigid framed tents and tractor trailer bodies/boxes.

**Subdivision** - See Town of Phippsburg Subdivision Ordinance.

**Substantial Start** - Completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost, excluding the planning and design costs.

**Subsurface Sewage Disposal System (SSDS)** - Any system designed to dispose of waste water on or beneath the surface of the earth, including but not limited to: a septic tank, disposal field, pit privy, vault privy, grandfathered cesspool, holding tank, pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes. SSDS does not include any discharge system licensed under 38 M.R.S.A. section 414 (over board discharge), any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

**Tent** – A portable fabric shelter intended for protection, including screen shelters and yurts.

**Timber Harvesting** - The cutting and removal of timber for the primary purpose of selling or processing forest products.

**Timber Harvesting and Related Activities** - Timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

**Travel Trailer**- A portable structure built as a vehicle designed for use as a temporary dwelling for travel. This structure shall not be used as a permanent dwelling.

**Traveled Way** – The part of the road over which vehicles travel.

**Use** - The purpose for which land or a structure is arranged, designed, or intended, or for which land or a structure is or may be occupied.

**Value** - Equal to the cost of materials plus labor at fair market rates.

**Variance** - A relaxation of the terms of this Ordinance.

*Note: See Board of Appeals Ordinance*

**Vegetation** - All live trees, shrubs, and other plants.

**Water Crossing** - Any project extending from one bank to the opposite bank of a stream or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

**Wetlands, Inland** - Areas enclosed by the normal high water mark of inland waters and areas otherwise identified on the basis of soils, vegetation or other criteria as inland wetlands including, but not limited to, swamps, marshes or bogs.

**Wilderness Campsite** – A campsite without water-carried sewage facilities. Sites shall contain a minimum of twenty thousand (20,000) square feet for each tent or shelter. This recreational area shall maintain a one hundred (100) foot setback from any residential property line.

**Windfirm** - The ability of a forest stand to withstand the normal forces of nature.

**Windmill(s)** – Any or various machines (for producing energy) driven by the force of the wind acting upon a number of vanes or sails.

**Woody vegetation** - Live trees or woody, non-herbaceous shrubs

**Yard** - The area of land on a lot not occupied by buildings.

**Yard/Garage Sale** - Casual public sale of goods, new or used, by other than an established business.

**TOWN OF PHIPPSBURG ORDINANCE  
VEHICLE EXCISE TAX EXEMPTION FOR  
ELIGIBLE ACTIVE DUTY MILITARY PERSONNEL  
MAY 7, 2013**

Section 1. Authority.

This ordinance is enacted pursuant to 36 M.R.S.A. § 1483-A, which expressly authorizes such ordinances.

Section 2. Excise tax exemption; qualifications.

Vehicles owned by a resident of this municipality who is on active duty serving in the United States Armed Forces and who is either permanently stationed at a military or naval post, station or base outside this State or deployed for military service for a period of more than 180 days and who desires to register that resident's vehicle(s) in this State are hereby exempted from the annual excise tax imposed pursuant to 36 M.R.S.A. § 1482.

To qualify for this exemption, the resident must present to the municipal excise tax collector certification from the commander of the resident's post, station or base, or from the commander's designated agent, that the resident is permanently stationed at that post, station or base or is deployed for military service for a period of more than 180 days.

For purposes of this section, "United State Armed Forces" includes the National Guard and the Reserves of the United States Armed Forces.

For purposes of this section, "deployed for military service" has the same meaning as in 26 M.R.S.A. § 814(1)(A).

For purposes of this section, "vehicle" has the same meaning as in 36 M.R.S.A. § 1481(5) and does not include any snowmobiles as defined in 12 M.R.S.A. § 13001.

Section 3. Effective date; duration.

This ordinance shall take effect at the adjournment of the Town Meeting at which it is adopted and shall remain in effect until it or 36 M.R.S.A. § 1483-A is repealed.

**TOWN OF PHIPPSBURG  
ORDINANCE FOR  
RESTRICTING VEHICLE WEIGHT ON POSTED WAYS**  
Adopted September 23, 1998 as amended through January 3, 2007

1. **AUTHORITY:** This ordinance is adopted pursuant to 30-A M.R.S.A. §3009 and 29-A M.R.S.A. § 2395 and 2388.
2. **PURPOSE:** The purpose of this ordinance is to prevent damage to town ways in the Town of Phippsburg which may be caused by vehicles of excessive weight, to lessen safety hazards and the risk of injury to the traveling public, to extend the life expectancy of town ways and to reduce the public expense of their maintenance and repair.
3. **DEFINITIONS:** The definitions contained in Title 29-A M.R.S.A. shall govern the construction of words contained in this ordinance. Any words not defined therein shall be given their common and ordinary meaning.
4. **RESTRICTIONS AND NOTICES:** The municipal officers may, either permanently or seasonally, impose such restrictions on the gross registered weight of vehicles as may, in their judgment, be necessary to protect the traveling public and prevent abuse of the highways, and designate the town ways to which the restrictions shall apply.

Whenever notice has been posted as provided herein, no person may thereafter operate any vehicle with a gross registered weight in excess of the restriction during any applicable time period on any way so posted unless otherwise exempt as provided herein.

The notice shall contain, at a minimum, the following information: the name of the way, the gross registered weight limit, the time period during which the restriction applies, the date on which the notice was posted, and the signatures of the municipal officers or Road Commissioner.

The notice shall be conspicuously posted at each end of the restricted portion of the way in a location clearly visible from the travelway. Whenever a restriction expires or is lifted, the notices shall be removed wherever posted. Whenever a restriction is revised or extended, existing notices shall be removed and replaced with new notices.

No person may remove, obscure or otherwise tamper with any notice so posted except as provided herein.

**5. EXEMPTIONS:** The following vehicles are exempt from this ordinance:

- (a) Any vehicle or combination of vehicles registered for a gross weight of 23,000 pounds or less;
- (b) Any vehicle or combination of vehicles registered for a gross weight in excess of 23,000 pounds and traveling without a load other than tools or equipment necessary for the proper operation of the vehicle. This exemption does not apply to special mobile equipment;
- (c) Any two-axle vehicle while delivering home heating fuel;
- (d) Any vehicle while engaged in highway maintenance or repair under the direction of the State or Town;
- (e) Any emergency vehicle (such as fire fighting apparatus or ambulances) while responding to an emergency;
- (f) Any school transportation vehicle while transporting students;
- (g) Any public utility vehicle while providing emergency service or repairs
- (h) Any wrecker towing a disabled vehicle
- (i) Any septic tank truck on an emergency pump, not to exceed 13,275 lbs maximum payload or 40,275 maximum permitted gross weight;
- (j) Any vehicle providing solid waste removal services to the Transfer Station while operating on Sam Day Hill Road;
- (k) Any vehicle hauling perishable products (as determined by the municipal officers) that is operating at a reduced weight and holds a valid permit in accordance with section 6;
- (l) Any vehicle whose owner or operator holds a valid permit from the municipal officers in accordance with section 6.

**6. PERMITS:** The owner or operator of any vehicle not otherwise exempt as provided herein may apply in writing to the municipal officers for a permit to operate on a posted way notwithstanding the restriction. The municipal officers may issue a permit only upon all of the following findings:

- (a) No other route is reasonably available to the applicant;
- (b) It is a matter of economic necessity and not mere convenience that the applicant use the way.

Even if the municipal officers make the foregoing findings, they need not issue a permit if they determine the applicant's use of the way could reasonably be expected to create or aggravate a safety hazard or cause substantial damage. They may also limit the number of permits issued or outstanding as may, in their judgment, be necessary to preserve and protect the highways.

In determining whether to issue a permit, the municipal officers shall consider the following factors:

- (a) The gross registered weight of the vehicle;
- (b) The current and anticipated condition of the way;

Town of Phippsburg, 1998 Restricting Vehicle Weight on Posted Roads Ordinance  
Amended through January 3, 2007

- (c) The number and frequency of vehicle trips proposed;
- (d) The cost and availability of materials and equipment for repairs;
- (e) The extent of use by other exempt vehicles;
- (f) Such other circumstances as may, in their judgment, be relevant.

The municipal officers may issue permits subject to reasonable conditions, including but not limited to restrictions on the actual load weight and the number or frequency of vehicle trips, which shall be clearly noted on the permit.

7. **ADMINISTRATION AND ENFORCEMENT**: This ordinance shall be administered and may be enforced by the municipal officers or their duly authorized designee (such as road commissioner, code enforcement officer or law enforcement officer). A duly authorized law enforcement officer, in addition to issuing any charge or citation hereunder, may, for the purpose of lessening any harm caused by the unlawful use of Town roads, require that an operator found in violation of this ordinance immediately limit such unlawful use. Such officer may require that the operator and vehicle return to their point of origin or may require other reasonable action to be taken for the purpose of limiting any continued unlawful use, regardless of whether or not the business purpose of such use has then been completed.
8. **PENALTIES**: Any violation of this ordinance shall be a civil infraction subject to a fine of not less than \$250.00 nor more than \$1,000.00. Each violation shall be deemed a separate offense. In addition to any fine, the Town may seek restitution for the cost of repairs to any damaged way and reasonable attorney fees and costs. Prosecution shall be in the name of the Town and shall be brought in the Maine District Court.
9. **AMENDMENTS**: This ordinance may be amended by the municipal officers at any properly noticed meeting.
10. **EFFECTIVE DATE**: This ordinance shall take effect immediately upon enactment by the municipal officers at any properly noticed meeting. In the event any portion of this ordinance is declared invalid by a court of competent jurisdiction, the remaining portions shall continue in full force and effect.

Given under our hands this 3<sup>rd</sup> day of January, 2007.

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Alan B. Douglass  
Chair, Board of Selectmen  
Town of Phippsburg

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Everett A. Perkins  
Board of Selectmen  
Town of Phippsburg

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Lawrence R. Pye  
Board of Selectmen  
Town of Phippsburg

Town of Phippsburg, 1998 Restricting Vehicle Weight on Posted Roads Ordinance  
Amended through January 3, 2007

Amendment Summary		
Date	Section	Amendment
2/25/04	5. Exemptions	(a) Added exemption for vehicles with a registered GVW of 23,000 pounds or less.
2/25/04	5. Exemptions	(b) Added exemption for vehicles with a registered GVW in excess of 23,000 pounds traveling empty.
2/25/04	5. Exemptions	(j) Added vehicles hauling perishable products operating at a reduced weight with permit.
1/03/07	5. Exemptions	(j) Added vehicles providing solid waste removal operating on Sam Day Hill Road
1/03/07	7. Administration and Enforcement	Allows law enforcement officers to require an overweight vehicle to turn around if found operating on a posted road.

Certified to be a true copy: Betty J. Herron, Town Clerk \_\_\_\_\_



**PUBLIC CEMETERY ORDINANCE**  
**TOWN OF PHIPPSBURG**  
**May 2, 2012**

1. **AUTHORITY:** This ordinance is enacted in accordance with Title 13 M.R.S.A. Section 1262, and “An Act to Incorporate the Phippsburg Cemetery District H.P. 552 – L.D. 767” approved by the Governor on April 10, 1963, and a Special Town Meeting held on August 4, 1963. It repeals and replaces in its entirety the “Phippsburg Public Cemetery By-Laws Ordinance” enacted June 29, 1963. This ordinance may be amended by a majority vote of residents at a Town Meeting.
2. **PURPOSE:** It is declared to be in the interests of promoting the general welfare, preventing disease, and promoting the public health that the Town enacts this ordinance to provide for proper operation and maintenance of its public cemeteries which consist of Morningside Cemetery, Reed Cemetery, and Hillside Cemetery.
3. **PHIPPSBURG CEMETERY DISTRICT, INC:** The Phippsburg Cemetery District, Inc. was established through State legislative action on April 10, 1963 as a separate legal entity from the Town of Phippsburg. At the August 4, 1963 Town Meeting all public cemetery land and assets were transferred to the Corporation. The legal Board of the Corporation consists of five Trustees elected by Town Meeting vote.
4. **BOARD OF TRUSTEES:**
  - A. Board of Trustees shall consist of five members elected by the voters at the Annual Town Meeting who shall serve staggered terms of five years. Should a Trustee resign or otherwise be unable to serve their full term the Board of Selectmen shall appoint a replacement for the balance of the unexpired term.
  - B. There shall be a meeting of the Trustees held soon after the annual town meeting at which time the Trustees shall choose by ballot one of their members to be Chairman, one to be Secretary, and one to be Treasurer. At the same meeting, the Trustees shall also appoint a Superintendent, a Clerk and such other officers as they may find necessary for the proper management of the affairs of the public cemeteries. The officers may be removed for cause at any time by vote of three of the trustees at a meeting duly called for that purpose. There shall be regular meetings of the Trustees at such times and in such places as a majority of the Trustees shall determine. Special meetings of the trustees may be called by the Chairman. The Trustees shall be notified of all meetings by written, printed, verbal or electronic notices, whichever is appropriate.

C. The Board of Trustees shall:

- 1) Have sole care, superintendence and management of the public cemeteries;
  - 2) Supervise the laying out and sale of lots and the construction of paths and avenues, the removal and planting of trees and shrubs and the erection of monuments and other structures in the public cemeteries and make such improvements as it considers desirable;
  - 3) Delegate authority to the superintendent and clerk to perform such duties which the Board of Trustees considers desirable;
  - 4) Adopt and amend such policies which it considers necessary to fulfill the duties outlined above, to protect the interests of the town and the lot owners, and to assure compliance with State of Maine Statutes. Such policies may be adopted or amended by a majority of the Board of Trustees at any time without Town Meeting approval and shall become effective immediately. A copy of the policies shall be available for examination in the Town Office;
  - 5) Adopt and amend such schedules of prices, fees and perpetual care rates which it considers necessary to fulfill the duties outlined above, to provide for the cemetery in a proper manner and to protect the interests of the town and lot owners. Such schedules of prices, fees and perpetual care rates may be adopted or amended by a majority of the Board of Trustees at any time without Town Meeting approval and shall become effective on the date adopted. A schedule of the lot prices shall also be available at Town Hall;
- 5. SUPERINTENDENT:** A Superintendent shall be appointed by the trustees and hold office at their discretion. The Superintendent shall be responsible for the care and maintenance of the public cemetery grounds as well as supervision of any additional employees or volunteers. The individual will also aid in the disposal of lots and perform such other duties as may be required of him or her by the trustees. The Superintendent shall report to the Trustees at the regularly scheduled meetings.
- 6. CLERK:** The Clerk shall be appointed by the Trustees and hold office at their discretion. The Clerk shall be responsible for recording, in a form approved by the Trustees, each interment made, together with the name, age, sex, veteran status, cause of death, date of burial and the number of the lot where buried. Such records are to be kept safely in the care of said clerk. When not in use, the records shall be kept in a fireproof case at all times, as required by State Law. The Clerk shall aid in the management of the public cemeteries, in the sale of lots and perform such duties as

may be required by the trustees. The Clerk shall report to the Trustees at the regularly scheduled meetings.

## **7. COMPLIANCE**

- A. Owners of burial lots in the cemeteries shall comply with this ordinance and all by-laws adopted by the Trustees.
- B. Cemetery grounds are sacredly devoted to the burial of the dead. The provisions and penalties of the law, as provided by Maine State Statutes pertaining to Criminal Trespass (17-A M.R.S.A. § 402(1)(F), Desecration or Defacement of Graves (17-A M.R.S.A. § 507) and Interference with Cemetery (17-A M.R.S.A. § 507-A) will be strictly enforced by law enforcement officials, Board of Trustees, Clerk or Superintendent.

**TOWN OF PHIPPSBURG**  
**SHELLFISH CONSERVATION ORDINANCE**  
**May 3, 2017**

1. **AUTHORITY:** This Ordinance is enacted in accordance with 12 MRSA Section 6671, and repeals and replaces in its entirety “SHELLFISH CONSERVATION ORDINANCE, TOWN OF PHIPPSBURG” dated May 3, 2016.
  - A. All flats bordering the Popham Beach State Park as of March 12, 2009 are under the jurisdiction of the Phippsburg Shellfish Conservation Ordinance. Recreational digging in Popham Beach State Park will not require a recreational license. Access routes to the flats will be determined by the Popham Beach State Park Manager.
2. **PURPOSE:** To establish a shellfish conservation program for the Town of Phippsburg which will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:
  - A. Licensing.
  - B. Limiting the number of shellfish harvesters.
  - C. Restricting the time and area where shellfish harvesting is permitted.
  - D. Limiting the minimum size of clams taken.
  - E. Limiting the amount of clams taken daily by a recreational harvester.
  - F. Management plans in Phippsburg and in cooperation with other towns for the conservation of shellfish in a manner consistent with the production of a reasonable yield to shellfish harvesters.
3. **CONSERVATION AND MANAGEMENT OF SHELLFISH RESOURCES:** It is determined that:
  - A. The clam flats of the Town are a valuable shellfish resource which is important to the local economy.
  - B. These flats are not an inexhaustible resource and, therefore, they must be prudently managed.
  - C. As part of the management process it is deemed necessary to restrict the number of shellfish licenses, to restrict the size and quantity of shellfish which may be harvested, and to take other measures as outlined in this Ordinance.

4. **SHELLFISH CONSERVATION COMMITTEE:** The Shellfish Conservation Program for the Town of Phippsburg will be administered by the Shellfish Conservation Committee consisting of five regular members and two alternate members to be appointed by the Selectmen for terms of three years.

A. Committee Responsibilities:

- (1) Establishing annually, in conjunction with the Department of Marine Resources, the number of shellfish harvesting licenses to be issued.
- (2) Schedule surveys as needed to gain data to determine the status of the Town's shellfish resources.
- (3) Submitting to the Board of Selectmen proposals for the expenditure of funds for the purpose of shellfish conservation.
- (4) Keeping this Ordinance under review and making recommendations for its amendment.
- (5) Securing and maintaining records of shellfish harvested from the Town's managed shellfish areas and closed areas that are conditionally opened by the Department of Marine Resources.
- (6) Recommending conservation closures and openings to the Board of Selectmen in conjunction with the area biologists of the Department of Marine Resources.
- (7) Submitting an annual report to the Town and the Department of Marine Resources covering the above topics and all other committee activities.
- (8) Identifying conservation work which will qualify an applicant for "Renewal" or "New License" status. The Municipal Shellfish Conservation Warden and/or Shellfish Conservation Committee members shall record the names and hours worked by individuals on these projects and submit them to the Shellfish Conservation Committee monthly.
- (9) Maintain a water quality testing program on the Kennebec River flats so as to enable harvesting.

5. **DEFINITIONS:**

- A. Clam flats - means the shore area between high and extreme low water marks.
- B. Conservation Work - conservation credit activities related to propagating, harvesting, cultivating, or farming shellfish which is approved by the Shellfish Conservation Committee such as re-seedings or surveys.

- C. Domiciled – means a person’s fixed, permanent and principal home.
- D. Harvest - means to dig or take by any means.
- E. Held a License - to have a license until the end of the harvesting year (June 30<sup>th</sup>). Credit will not be given for a partial year (i.e. if a Harvester surrenders his/her license he/she will not be given credit for having held a license for that year).
- F. License Reduction through Attrition - a program which reduces commercial adult licenses by not reissuing them once surrendered and not allowing licenses left over from the Commercial Adult Renewal Category to go into the Commercial Adult New License Category. Resident Commercial Student licenses are exempt from this program.
- G. Municipality - refers to the Town of Phippsburg.
- H. Nonresident - anyone not qualified as a resident under this Ordinance. Domiciled means a person’s fixed, permanent and principal home.
- I. Possession - to have in one’s custody or control, either personally or by another person who is under one’s control.
- J. Required Conservation Time - A minimum of twelve (12) hours of conservation work between May 1<sup>st</sup> of the prior year and the last day of the following April. Of the minimum of 12 hours at least 8 must be contributed to reseeded efforts. A harvester 65 years of age or older on the last day of April of the licensing year must complete a minimum of twelve (12) hours of conservation time but is exempt from the requirements to complete 8 hours of reseeded. Students must have at least five (5) hours of any type of conservation time to renew a Resident Commercial Student License.
- K. Resident (Commercial Shellfish Harvesting License) - a person who has been domiciled in this Town for at least six months (180 days) prior to the time claim of such residence is made, and who shall remain domiciled during the period of time the license is valid.
- L. Resident (Recreational Shellfish Harvesting License) - an individual and his/her family who are:
- Living in town as a taxpayer
  - Renting a home, apartment, or cottage
  - Renting a campsite at an established state licensed campground (i.e. Hermit Island, Head Beach, Meadowbrook).
  - Camping on private property with a camping permit issued by the Code Enforcement Officer in accordance with the Town’s Land Use Ordinance.

Also, a guest who is staying at a “Residents” dwelling or camping on their property may purchase a Resident Recreational license which is valid as long as the guest remains in Phippsburg overnight (cannot day trip from outside of Phippsburg on a Resident Recreational license).

M. Shellfish or Clams - when used in the context of this Ordinance means soft shell clams (*Mya arenaria*), Quahogs (*Mercenaria mercenaria*), Atlantic Surf Clams (Hen Clams - *Spisula solidissima*), Razor Clams (*Ensis Directus*), Eastern/American Oysters (*Crassostrea Virginica*), and European Oysters (*Ostrea Edulis*).

N. Start to Finish for a Grid Survey – Shellfish Harvesters must sign in and out with the supervisor of the Grid Survey to be credited with the time.

O. Student - actively enrolled in grades 5 through 12 as of the date of application for consideration of a Resident Commercial Student License.

P. Take - to remove or attempt to remove a marine organism from its natural habitat.

## 6. LICENSING:

A. A Phippsburg shellfish harvesting license is required for any person 10 years or older to harvest or take shellfish from the shores and flats of this municipality. A commercial harvester must also have a valid State of Maine commercial shellfish license issued by the Department of Marine Resources before harvesting shellfish in Phippsburg. Shellfish licenses are not required in order to dig and take no more than one peck in Popham Beach State Park areas where and when it is lawful to do so.

B. Designation, Scope and Qualifications:

(1) Resident, Nonresident and Student Commercial Shellfish Licenses: These licenses are available to commercial harvesters and entitles the licensee to harvest or take any amount of shellfish from the tidal waters or clam flats of this municipality where and when it is otherwise lawful to do so.

(2) Nonresident Commercial Licenses: A minimum number of Commercial Shellfish Licenses shall be provided for nonresidents which shall be a number not less than ten (10) percent of the number of Commercial Shellfish Licenses provided for residents.

(3) Resident and Non Resident Recreational Licenses: A Recreational License entitles the holder to harvest and take no more than one peck of soft shell clams (*Mya arenaria*), one peck of Quahogs (*Mercenaria mercenaria*), one bushel of Atlantic Surf Clams (Hen Clams – *Spisula Solidissima*), one peck of Razor Clams (*Ensis Directus*), one peck of Eastern/American Oysters (*Crassostrea Virginica*) and one peck of European Oysters (*Ostrea Edulis*) in any one day. Shellfish harvested by holders of a Recreational License are for the consumption by the harvester and his/her family and shall not be sold. This license is not available to holders of a State of Maine

Commercial Shellfish License. Recreational license fees shall be waived for residents 65 years or older and 16 years or younger. A license is not required for children under the age of 10 as long as they are with an adult who has a valid town shellfish license.

(4) License must be signed: The licensee must sign the license to make it valid.

C. Application deadline and contents: Applications for licenses may be obtained at the Town Office starting May 1<sup>st</sup> of each year.

(1) Submission: Applications must be submitted according to the following schedule:

(a) Commercial Renewal and New Licenses: Applications must be submitted during the month of May prior to the close of business on the last scheduled business day at the Town Hall. The Town Administrator will mail a reminder notice and application to all current license holders the last week in April. The first week in May the Town Administrator will review applications received with the Chairman of the Shellfish Commission and issue licenses in accordance with this ordinance.

(b) Commercial General and Recreational Licenses: Applications may be submitted at any time.

(2) Contents of Application: The application must be in the form of an affidavit and must contain the applicant's name, category of license sought, current address and duration there, birth date, height, weight, signature, and whatever other information the town may require.

(3) Misrepresentation and Ineligibility: If the Town Administrator becomes aware of circumstances which suggest a licensee has given false information on a license application or is otherwise ineligible the Police Chief or his designee will investigate those circumstances. If the results of the investigation suggest a licensee has given false information on a license application or is otherwise ineligible to hold a license under this ordinance, the Shellfish Commission will hold a hearing as per section 12. The Police Chief shall present the evidence suggesting that false information has been given or that the individual is otherwise ineligible. The licensee shall have the right to present evidence to show that false information has not been given or that he/she is eligible. Persons aggrieved by this suspension may appeal as per section 13.

(4) Limitation of Commercial Shellfish Harvesting Licenses: Because the shellfish resources are limited and because a harvester can be expected to harvest a certain volume of shellfish per year, the number of harvesters must be controlled. This number may vary from year to year, depending upon estimates of the resource capabilities and management requirements consistent with good resource utilization.

(a) License Fees and Allocation: The fees and allocation of licenses shall be set by May 1st of each year by the Board of Selectmen based on a recommendation from



the Shellfish Conservation Commission. The Town Administrator will send the “notification of license allocation” to the Department of Marine Resources by May 5<sup>th</sup> for their approval. Fees received for shellfish licensing shall be used by the Town for shellfish management, conservation, enforcement, and other shellfish related matters.

- (b) Issuance of Licenses: The Town Administrator shall issue commercial licenses to residents and non-residents according to the priorities listed in this ordinance. Recreational licenses for the new license year may be issued during normal business days starting June 16<sup>th</sup> such licenses not to be valid until July 1st.
- (c) Commercial Renewal License Category: This commercial category of license shall be available on normal municipal business days to qualified applicants for the period beginning June 16th and ending June 30th. If a Resident Commercial Student license holder applies for both a Resident Commercial Student license in the renewal category and a Resident Commercial Adult license in the new license category their Resident Commercial Student renewal license may be held after June 30th until it is determined if they qualify for a Resident Commercial Adult license. Applicants must:
- (1) Have submitted an application during the month of May.
  - (2) Have been licensed for the previous year.
  - (3) Have completed the number of conservation hours described in the definitions section of this ordinance under “Required Conservation Time.” Upon written request the Shellfish Conservation Commission may hold a hearing as per section 12 to waive all or part of an applicant’s conservation time requirement due to unforeseen circumstances to include, but not limited to, medical issues or family emergencies. Any request for hearing must be submitted by the date of the April Shellfish Conservation Meeting or earlier. Unless physically incapable, the applicant will still be required to complete a total of 12 conservation hours through less strenuous work, such as attending meetings. Any licensee aggrieved by the decision of the Shellfish Conservation Commission may appeal as per section 13.
  - (4) Have at least five (5) hours of any type of conservation time to renew a Resident Student Commercial License.
  - (5) Have not more than two (2) convictions for violation of this Ordinance during the preceding year.
  - (6) Have purchased a shellfish license prior to the end of the period of issuance of the previous license cycle.

- (7) Failure to obtain a renewal license during the time period designated in section 6.C.(4)(c) will result in the forfeiture of seniority (in terms of years a license has been held during the past five years) and accumulated conservation time for the purpose of obtaining a new license for the coming year. Loss of seniority and accumulated conservation time is temporary and will not apply to the next year's license sale.
- (8) If a harvester held a Commercial license the previous year and did not meet the required conservation time as defined in section 5.I. (Definitions) for a renewal license then he/she is not eligible to participate and receive a license in the new license category. The unissued renewal license may then be eliminated by vote of the Shellfish Commission and Selectmen by reducing the annual allocation request to the Department of Marine Resources. This is referred to as a "license reduction through attrition."

In the event that the number of qualifying applications exceeds the number of available licenses, licenses shall be awarded according to seniority in terms of the number of years that each applicant has held a valid Phippsburg Commercial Shellfish Harvesting License consecutively over the last five years. In the event there is a seniority tie for the last license(s) to be awarded, the remaining license(s) shall be awarded by lottery.

- (d) Commercial New License Category: If any commercial licenses are still available under this year's approved license allocation, this category shall be available on normal business days to qualified applicants for the period beginning July 1<sup>st</sup> and ending July 14<sup>th</sup>. Credit (seniority) of "years having held a license" is not transferable between categories (Non Resident to Resident Commercial Licenses or Resident to Non Resident Commercial Licenses). Applicants must:

- (1) Have submitted an application during the month of May.
- (2) Have no convictions for violation of this Ordinance during the preceding year.

In the event that the number of qualifying applications exceeds the number of available licenses, they shall be awarded according to the priority list below. In the event of a tie in any of the following categories the issuance of the license shall be determined by lottery. Years that a harvester held a Resident Commercial Student license counts towards the issuance of a regular Commercial Resident or Nonresident License.

Consideration #1 - Completed the "Required Conservation Time" and held a license for Five of the last Five years

Consideration #2 - Completed the "Required Conservation Time" and held a license for Four of the last Five years.

Consideration #3 - Completed the "Required Conservation Time" and held a license for Three of the last Five years.

Consideration #4 - Completed the "Required Conservation Time" and held a license for Two of the last Five years.

Consideration #5 - Completed the "Required Conservation Time" and held a license for One of the last Five years

Consideration #6 - Completed the "Required Conservation Time" and has not held a license, but has completed the "Required Conservation Time" during any of the past 5 years. Licenses are issued to the applicants with the most years of "Required Conservation Time" in a row counted back from the date of application.

Consideration #7 - Less than Twelve hours of any Conservation Time or has Twelve or more hours of Conservation Time but has failed to meet the requirement of 8 hours reseeding (issued to the applicant with the most hours).

- (e) Un-issued Commercial Licenses: If any licenses still remain un-issued after July 14th, they will be available for those harvesters who have applications pending on file for the specific category that the license is left over from (Resident Commercial, Non-Resident Commercial, or Resident Commercial Student). In the event that the number of applications on file exceeds the number of licenses left over, they will be awarded in accordance with the same priority list that is used in the Commercial New License Category. In the event of a tie, the issuance shall be determined by lottery. If any licenses remain left over in this category they will become available on the first municipal business day in October for resident and nonresident members of the general public on a first come - first served basis. Student Commercial licenses must be issued to students. Applicants must have no convictions for violation of this Ordinance during the preceding year.
- (f) License Notification: When notified of the availability of a license the applicant must purchase his/her license within 14 days. If the license is not purchased within 14 days the next applicant on the priority list will be notified that the license is available.
- (g) Conservation Activity Attendance: It is the responsibility of the individual Shellfish Harvester to sign the attendance sheet at each meeting or event or otherwise ensure that their names are listed for credit. It is also the responsibility of the Shellfish Harvester to remain aware of any changes in the meeting or events schedule, which will be posted at the Town Office.

- (5) Surrender of License: Once a license is issued for a harvest year it cannot be surrendered by the license holder during that year unless:
- (a) The license holder has died (automatic surrender). The surrendered license would either be reissued in a manner consistent with the procedures of the “New License Category” and “Unissued License Category” or it may be eliminated by vote of the Shellfish Commission to reduce the number of available licenses in the future as part of a “license reduction through attrition program.”
  - (b) A Commercial Resident license holder moves out of town and establishes a fixed, permanent and principal home elsewhere. In this case they must surrender their license within 30 days. The same applies to a Commercial Nonresident License holder who moves into town. A surrendered license would either be reissued in a manner consistent with the procedures of the “New License Category” and “Unissued License Category” or it may be eliminated by vote of the Shellfish Commission to reduce the number of available licenses in the future as part of a “license reduction through attrition program.” However, the number of nonresident commercial licenses allocated can never fall below 10% of the resident commercial licenses allocated.
  - (c) A holder of a Commercial Shellfish license who is a Military Reservist or National Guard member is called to active duty. They may surrender their license to the Town by giving notice to the Town and the estimated times of the active duty. Within 30 days of the return from active duty, the individual shall submit an application to the Town for re-issuance of the license or issuance of a new license and the town shall reissue or renew the license. All conservation time shall be waived for the issuance of a renewal license. Upon notice and surrender of a license under this provision, the Town may temporarily issue the license or renewal thereof to a new harvester in the same license category in accordance with the priority list in section 6.C.(4)(d) “Commercial New License Category” of this ordinance, and such temporary license shall be surrendered upon the return of the Military Reservist or National Guard member or upon the request of the Town. The cost of the license for the Military Reservist or National Guard member and reimbursement to the temporary holder shall be prorated.
  - (d) If a license is surrendered in accordance with the above sections the license holder (or family in the case of death) will receive a refund of the fee paid, prorated for the remaining term of the license.
- (6) Expiration of License: Each license issued under authority of this Ordinance expires at midnight on the last day of June of the following year, except that licenses issued between January 1<sup>st</sup> and the last day of June under the previous year’s quota of licenses shall expire on the last day of June.
- (7) Reduction in License Allocation: If, for any reason, a reduction in license allocation is necessary, and cannot be accomplished through the “license reduction through

attrition” program, the person(s) who have held their license for the least amount of consecutive years (counted back from application date five years) will not be issued a renewal license. In the case of a tie a lottery will be held with the winner(s) being awarded the licenses.

- (8) Business Owners: Owners of Phippsburg businesses renting cottages or camping spaces may be issued sufficient recreational licenses for their customers. These licenses will have the same restrictions as licenses purchased directly from the Town Office, except that the business owner shall issue these licenses only for the time their guests are scheduled to be staying at that business.

(9) Suspensions:

- (a) Violation of Ordinance: The Shellfish Conservation Commission shall be empowered to suspend for up to 60 days, after public hearing as per section 12, the license of any person it finds in violation of this Ordinance. The Shellfish Conservation Commission may also suspend the right to purchase a license for up to 60 days, of persons found to be harvesting without a license in violation of the terms of this Ordinance. Licensees aggrieved by this suspension may appeal as per section 13.
- (b) Leaving the Scene: Any Shellfish Licensee who leaves the scene while being summonsed by a Law Enforcement Officer/Municipal Shellfish Conservation Warden or who refuses a summons issued by a Law Enforcement Officer/Municipal Shellfish Conservation Warden shall have his/her shellfish license automatically suspended for a period of 60 days after a hearing as per section 12. Persons aggrieved by this suspension may appeal as per section 13.
- (c) Commercial Convictions: Any commercial shellfish licensee who has two convictions for violations of this ordinance within 36 months shall have his/her shellfish license automatically suspended for a period of 60 days after a hearing as per section 12. Licensees aggrieved by this suspension may appeal as per section 13.
- (d) Recreational License Convictions: Any recreational shellfish licensee who is convicted for a violation of this ordinance shall have his/her shellfish license automatically suspended for the remainder of the licensing year after a hearing as per section 12 and will be ineligible for a future license as follows:

First violation conviction - Ineligible for one year from the date of suspension.

Second violation conviction - Ineligible for two years from the date of suspension.

Third violation conviction - Ineligible for three years from the date of suspension.

Licensees aggrieved by this suspension may appeal as per section 13.

- (e) If a Licensees pays for their shellfish license by check and the check is returned for insufficient funds the holder will be notified by the Town Treasurer and will have 30 calendar days to pay the town for the license and associated insufficient funds fees. If not settled within the 30 day period the license will be automatically suspended for non-payment.
- (10) Notice of Application Procedures: Notice of the number of licenses to be issued and the procedure for application shall be published in the Bath-Brunswick Times Record This publication will occur prior to May 15th and will be posted at the Town Hall until the application and licensing period ends.
- (11) Lottery Procedures: If, in any of the commercial license categories, the number of qualifying applications exceeds the number of available licenses on issuance dates, and the provisions of those sections do not determine who shall be awarded the licenses, licenses in those categories shall be issued according to the following procedure.
  - (a) The Town Administrator shall designate an assistant, who is disinterested in the outcome of the procedure. “Disinterested” means not related by blood, marriage or adoption to any of the applicants and not having a direct or indirect pecuniary interest in the outcome of the procedure. No member of the Shellfish Conservation Commission shall serve as the assistant in carrying out this procedure.
  - (b) The Town Administrator shall write the name of each eligible person for a license category on an index card of uniform size, color, texture and thickness.
  - (c) The Town Administrator’s assistant shall then place all the numbered index cards in a container and shake the container to mix them up.
  - (d) The Town Administrator shall withdraw the cards one-by-one, reading each name drawn out loud. The available licenses in each category will be issued in the order of names drawn.
  - (e) The procedure set forth in this section shall be a public proceeding which is advertised at least 7 calendar days prior to the event in the same manner as municipal meetings.
- 7. **OPENING AND CLOSING FLATS**: Selectmen, with the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvesting. Upon recommendation of the Shellfish Conservation Committee, after review at a scheduled and publicized Shellfish Conservation meeting, and concurrence of the Department of Marine Resources area biologist that the status of shellfish resources and other factors bearing on sound management indicate that an area should be opened or closed, the Selectmen will consider it at a regularly scheduled and publicized Selectmen’s Meeting and may, at their discretion,

call a public hearing on a 7 calendar days' notice published in the Bath Brunswick Times Record, stating the time, place and subject matter of the hearing. A copy of the decision shall be sent to the Department of Marine Resources.

8. **NIGHT SHELLFISH HARVESTING:** It is prohibited to harvest shellfish at night using an artificial light from April 1<sup>st</sup> through October 31<sup>st</sup>. Night shellfish harvesting using an artificial light is permitted from November 1<sup>st</sup> through March 31<sup>st</sup> for tide completion digging only. Tide completion digging pertains to evening tides only, when low water is one hour after sunset or earlier, allowing the harvester to complete the tide. Tide calculations shall be based on those for Portland Harbor - without corrections for Phippsburg.
9. **MINIMUM LEGAL SIZE OF SOFT SHELL CLAMS:** It is unlawful for any person to possess soft shell clams within the Town of Phippsburg, Sagadahoc County, which are less than two (2) inches in the longest diameter except as provided by subsection (A) of this section. One peck a day allowed for recreational harvesters.
  - A. Tolerance: Any person may possess soft shell clams that are less than two (2) inches if they comprise less than 10 percent of any lot. The tolerance shall be determined by numerical count of not less than one peck or more than four pecks taken at random from various parts of the lot or by count of the entire lot if it contains less than one peck.
  - B. Penalty: Whoever violates any provision of this section shall be punished as provided by 12 MRSA. Section 6681.
10. **OTHER SHELLFISH RESTRICTIONS:**
  - A. Razor Clams (*Ensis Directus*) - DMR Reg. Ch 10.06. Requires a minimum size of 4" and no electro-fishing.
  - B. Eastern/American Oysters (*Crassostrea Virginica*) - DMR Reg. Ch.14. Prohibits the possession of cultchless.
  - C. Quahogs (*Mercenaria mercenaria*) - DMR Reg, Ch. 10 requires minimum size of 1" hinge width.
11. **PENALTY:** A person who violates this Ordinance shall be punished as provided by 12 MRSA Section 6671. All fines levied by the courts under this Ordinance shall be paid to the Town of Phippsburg and shall be used for shellfish conservation expenses.
  - A. Exhibiting License: When any person is engaged in an activity which is licensed under this Ordinance, he or she shall, upon the request of a Municipal Shellfish Conservation Warden, exhibit his or her license. Failure to exhibit a license within a reasonable time when requested shall be prima-facie evidence that the person is not licensed.
  - B. Search and Inspection: Accepting an issued shellfish license shall constitute consent to search and inspection by a Municipal Shellfish Conservation Warden of any equipment,

watercraft or vehicles used in connection with the license activity and to seize evidence of a violation of this Ordinance.

- C. Standing By: It shall be a violation of this ordinance for any person to fail or refuse to stand by immediately for inspection at the request of a Municipal Shellfish Conservation Warden in uniform.
- D. Throwing or Dumping Items: It shall be a violation of this ordinance for any person who has been requested or signaled to stop by a Municipal Shellfish Conservation Warden in uniform, to throw or dump into any water any marine organism, or any pail, bag, barrel or other container of any type, or the contents thereof, before the Municipal Shellfish Conservation Warden has inspected the same.
- E. Molesting Municipal Shellfish Gear: The Town of Phippsburg may, as part of its municipal shellfish program, place protective netting, fencing, traps or other gear in the intertidal zone to provide protection from shellfish predators. Any netting, fencing, traps or other gear placed for the purpose must be clearly marked with signs or tags that state that the gear belongs to the Town of Phippsburg and indicate the purpose for the gear. A person may not tamper with, molest, disturb, alter, destroy or in any manner handle gear placed by the Town of Phippsburg in accordance with this section.
- F. Harvesting in a Closed Area: It shall be unlawful for any person to harvest, take or possess shellfish from any areas closed by the Town of Phippsburg in accordance with DMR Regulation, Chapter 7. Harvesting shellfish in a closed area is a violation of this municipality's ordinance and is punishable under MSRA Title 12 §6671.

Boundaries of conservation closures are explicitly defined in the conservation closure application submitted by the town of Phippsburg to DMR and are part of the resulting permit issued by DMR. These permits are posted at the town office and on the DMR website.

- 12. HEARING PROCEDURES: If an hearing is to be held by the Shellfish Commission as per this ordinance the following procedure will be followed:
  - A. The Chairman of the Shellfish Commission will advise the Town Administrator of the date for the hearing.
  - B. The Town Administrator will give written notification to the licensee involved at least 14 days prior to the hearing. This notification shall explain the reason for the hearing. It will also be advertised in the same manner as meeting notifications.
  - C. The Shellfish Commission will hold the hearing and prepare a written decision including a findings of fact. This decision will be issued within 14 days of the final hearing and will include the appeal process outlined in Section 13.



13. **APPEAL PROCEDURES:** Any person aggrieved by the decision of the Shellfish Conservation Commission which affects their license or issuance of a license may make an appeal to the Board of Selectmen within 14 days of such decision. The Board of Selectmen will hold an appellate hearing on the appeal (the decision of the Shellfish Commission will be reviewed based on the same evidence submitted to them). If the appellant does not agree with the decision made by the Board of Selectmen they may appeal within 30 days to the Superior Court under Rule 80B of the Maine Rules of Civil Procedure.
14. **EFFECTIVE DATE:** This Ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective on July 1, 2017 after its adoption at a Town Meeting provided a certified copy of the Ordinance is filed with the Commissioner within 20 days of its adoption.
15. **DURATION:** This Ordinance shall remain in effect until repealed or replaced.
16. **SEPARABILITY:** If any section, subsection, sentence or part of this Ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Ordinance.

<b>Shellfish License Issuance Timeline</b>	
April Shellfish Meeting	Shellfish Commission votes on license allocation and fees. This is also the deadline for any conservation time waiver requests
Last week in April	T/A sends notification letter, application and conservation hours to all current commercial licenses holders
April 30th	Deadline for conservation hours (May 1st to April 30th)
May 1st	Deadline for Selectmen to vote on license allocation and fees. T/A sends license allocation and fees request to DMR as soon as possible but no later than May 5th.
May 15th	Advertise license allocation and procedures in Times Record and post at Town Hall
During May	Commercial license applications have to be submitted for priority
First week in June	T/A and Chair of the Shellfish Commission determine issuance list for Renewal Licenses and priority list for the New License Category. T/A sends out notification letters to those who will be receiving Renewal Licenses or are listed on the New License priority list.
Commercial Renewal Licenses issued	June 16th to July 1st
Recreational Licenses available	June 16th
Commercial New Licenses issued	July 1st to July 14th
Un-issued Commercial licenses issued in each category	After July 14th

Shellfish Conservation Ordinance of May 3, 2017

Un-issued Commercial licenses issued for anyone (no category)	After October 1st
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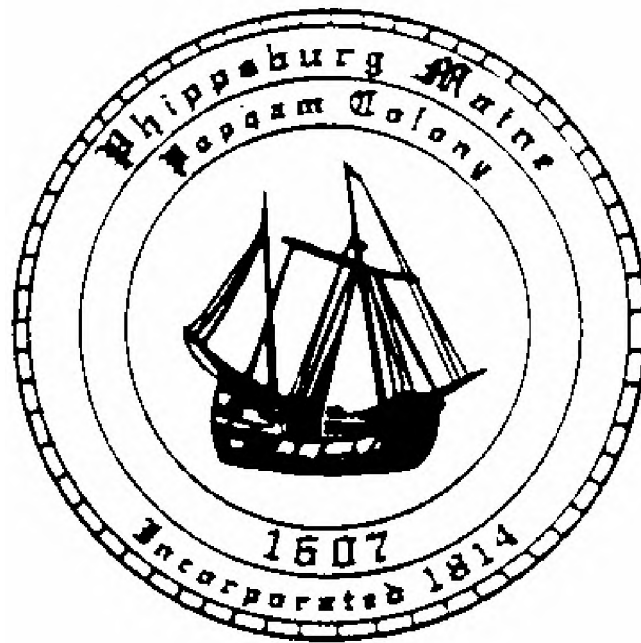
Amendment Summary		
Date	Section	Amendment

# TOWN OF PHIPPSBURG, MAINE

## SHORELAND ZONING ORDINANCE

*June 9<sup>th</sup>, 2009*

*As amended through May, 2012*



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## ABBREVIATIONS

CEO	Code Enforcement Officer
DEP	Department of Environmental Protection
DMR	Department of Marine Resources
IF&W	Inland Fish and Wildlife
IBC	International Building Code
IRC	International Residential Code
LPI	Licensed Plumbing Inspector
MRSA	Maine Revised Statutes Annotated
NFPA	National Fire Protection Association
Town	Town of Phippsburg

# **SHORELAND ZONING ORDINANCE**

## **TOWN OF PHIPPSBURG, MAINE**

As Amended through May 2012

The effective date of this Ordinance is June 9<sup>th</sup>, 2009. This Ordinance repeals and replaces in its entirety the Ordinance entitled "Shoreland Zoning Ordinance, June 5, 1993."

### **Section 1. Purpose**

A. The purpose of this Ordinance is to further the maintenance of safe and healthful conditions; to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands; to control building sites, placement of structures and land uses; to conserve shore cover, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas.

### **Section 2. Authority**

A. This Ordinance has been prepared in accordance with the provisions of Title 38 Sections 435-449 of the Maine Revised Statutes Annotated (M.R.S.A.) and the general home rule powers of the Municipality.

### **Section 3. Applicability**

A. This Ordinance applies to all land areas within 250 feet, horizontal distance, of the:

1. Normal high-water line of any great pond or river,
2. Upland edge of a coastal wetland, including all areas affected by tidal action
3. Upland edge of a freshwater wetland.

B. This Ordinance also applies to:

1. All land areas within 75 feet, horizontal distance, of the normal high-water line of a stream.
2. All 100 year flood plains as defined by the current Flood Insurance Rate Maps.
3. Any structure built on, over or abutting a dock, wharf or pier, or other structure extending or located below the normal high-water line of a water body or within a wetland.



#### **Section 4. Effective Date**

##### **A. The Effective Date of Ordinance and Ordinance Amendments.**

1. This Ordinance, which was adopted by the municipal legislative body on June 9<sup>th</sup> 2009 shall not be effective unless approved by the Commissioner of the Department of Environmental Protection. A certified copy of the Ordinance, or Ordinance Amendment, attested and signed by the Municipal Clerk, shall be forwarded to the Commissioner for approval. If the Commissioner fails to act on this Ordinance or Ordinance Amendment, within forty-five (45) days of his/her receipt of the Ordinance, or Ordinance Amendment, it shall be automatically approved.
2. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of this Ordinance, or Ordinance Amendment, if the Ordinance or Ordinance Amendment is approved by the Commissioner.

##### **B. Sections 15.P and 15.P.1.**

1. Section 15.P is repealed on the statutory date established under 38 M.R.S.A. section 438-B (5), at which time Section 15.P.1 shall become effective. Until such time as Section 15.P. is repealed, Section 15.P.1 is not in effect.

*NOTE: The statutory date established under 38 M.R.S.A. section 438-B (5) is the effective date of state-wide timber harvesting standards. That date is "the first day of January of the 2nd year following the year in which the Commissioner of Conservation determines that at least 252 of the 336 municipalities identified by the Commissioner of Conservation as the municipalities with the highest acreage of timber harvesting activity on an annual basis for the period 1992-2003 have either accepted the state-wide standards or have adopted an ordinance identical to the state-wide standards." 38 M.R.S.A. section 438-B (5) further provides that "the Commissioner of Conservation shall notify the Secretary of State in writing and advise the Secretary of the effective date of the state-wide standards."*

#### **Section 5. Availability**

- A. A certified copy of this Ordinance shall be filed with the Municipal Clerk and shall be accessible to any member of the public. Copies shall be made available to the public at reasonable cost at the expense of the person making the request. Notice of availability of this Ordinance shall be posted.

#### **Section 6. Severability**

- A. Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

#### **Section 7. Conflicts with other Ordinances**

- A. Whenever a provision of this Ordinance conflicts with or is inconsistent with another provision of this Ordinance or of any other ordinance, regulation or statute administered by the municipality, the more restrictive provision shall control.

## **Section 8. Amendments**

**A.** This Ordinance can be amended only by a majority vote at any Phippsburg Town Meeting. Copies of amendments, attested and signed by the Town Clerk, shall be submitted to the Commissioner of the Department of Environmental Protection following adoption by the municipal legislative body and shall not be effective unless approved by the Commissioner. If the Commissioner fails to act on any amendment within forty-five (45) days of his/her receipt of the amendment, the amendment is automatically approved. Any application for a permit submitted to the municipality within the forty-five (45) day period shall be governed by the terms of the amendment, if such amendment is approved by the Commissioner.

**B.** Amendments can be initiated only by a majority vote of the Planning Board, or by a majority vote of the Board of Selectmen or by written petition signed by a number of voters equal to at least ten (10) percent of the number of votes cast in the Town at the last gubernatorial election.

## **Section 9. Districts and Zoning Map**

### **A. Official Shoreland Zoning Map**

**1.** The areas to which this Ordinance is applicable are hereby divided into the following districts as shown on the Official Shoreland Zoning Map which is made part of this Ordinance:

- a.** Resource Protection
- b.** Residential
- c.** Village
- d.** General Development
- e.** Stream Protection

### **B. Certification of Official Shoreland Zoning**

**1.** The Official Shoreland Zoning Map shall be certified by the attested signature of the Town Clerk and shall be located in the Town Hall.

### **C. Changes to the Official Shoreland Zoning Map**

**1.** If amendments, in accordance with Section 8, are made in the district boundaries or other matter portrayed on the Official Shoreland Zoning Map, such changes shall be made on the Official Shoreland Zoning Map within thirty (30) days after the amendment has been approved by the Commissioner of the Department of Environmental Protection.

## **Section 10. Interpretation of District Boundaries**

A. Unless otherwise set forth on the Official Shoreland Zoning Map, district boundary lines are property lines, the centerlines of streets, roads and rights of way, and the boundaries of the shoreland area as defined herein. Where uncertainty exists as to the exact location of district boundary lines, the Board of Appeals shall be the final authority as to location.

## **Section 11. Land Use Requirements**

A. Except as hereinafter specified, no building, structure or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, expanded, moved, or altered and no new lot shall be created except in conformity with all of the regulations herein specified for the district in which it is located, unless a variance is granted.

## **Section 12. Non-conformance**

### **A. Purpose**

1. It is the intent of this Ordinance to promote land use conformities, except that nonconforming conditions that existed before the effective date of this Ordinance or amendments thereto shall be allowed to continue, subject to the requirements set forth in Section 12. Except as otherwise provided in this Ordinance, a non-conforming condition shall not become more non-conforming.

### **B. General**

1. Transfer of Ownership: Non-conforming structures, lots, and uses may be transferred, and the new owner may continue the non-conforming use or continue to use the non-conforming structure or lot, subject to the provisions of this Ordinance.

2. Repair and Maintenance: This Ordinance allows, without a Planning Board permit, the normal upkeep and maintenance of non-conforming uses and structures including repairs or renovations which do not involve an expansion of the non-conforming use or structure, and such other changes in a non-conforming use or structure as federal, state, or local building and safety codes may require. Any repairs or renovations with a value of \$1,000.00 or more require a building permit.

*NOTE: Value equals cost of material and labor at fair market rates*

### **C. Non-conforming Structures**

**1. Expansions:** A non-conforming structure may be added to or expanded after obtaining a permit from the same permitting authority as that for a new structure, if such addition or expansion does not increase the non-conformity of the structure. Such a permit must be recorded in the Sagadahoc Registry of Deeds. No building permit shall be issued by the CEO without proof of such recording. **Further limitations are listed below:**

**a.** After January 1, 1989 if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure can be expanded, as measured in floor area up to 30% and also the volume by up to 30%, during the lifetime of the structure. Also, any portion of the structure outside the setback is restricted to the same 30% increase. If a replacement structure conforms with the requirements of Section 12.C.3, and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.

**b.** Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in sub-section 2. Relocation, below; if the completed foundation does not extend beyond the exterior dimensions of the structure; and that the foundation does not cause the structure to be elevated by more than three (3) additional feet as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered an expansion of the structure.

**c.** No structure which is less than the required setback from the normal high-water line of a water body, tributary stream, or upland edge of a wetland shall be expanded toward the water body, tributary stream, or wetland.

**2. Relocation:** A non-conforming structure may be relocated within the boundaries of the parcel on which the structure is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board or its designee, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Wastewater Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a structure be relocated in a manner that causes the structure to be more non-conforming. In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board or its designee shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback area in order to relocate a structure, the Planning Board shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

**a.** Trees removed in order to relocate a structure must be replanted with at least one native tree, three (3) feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established. An area at least the same size as the area where vegetation and/or ground cover was disturbed, damaged, or removed must be reestablished within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.

**b.** Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.

**3. Reconstruction or Replacement:** Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board or its designee in accordance with the purposes of this Ordinance. In no case shall a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Section 12.C.1 above, as determined by the non-conforming floor area and volume of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area; no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Section 12.C.2. above. Any non-conforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed by 50% or less of the market value, or damaged or destroyed by 50% or less of the market value of the structure, excluding normal maintenance and repair, may be reconstructed in place if a permit is obtained, from the Code Enforcement Officer within eighteen (18) months of such damage, destruction, or removal. In determining whether the building reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or its designee shall consider, in addition to the criteria in Section 12.C.2 above, the physical condition and type of foundation present, if any.

**4. Change of Use of a Non-conforming Structure:** The use of a non-conforming structure may not be changed to another use unless the Planning Board, after receiving a written application, determines that the new use will have no greater adverse impact on the water body, tributary stream, or wetland, or on the subject or adjacent properties and resources than the existing use. In determining that no greater adverse impact will occur, the Planning Board shall require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, flood plain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

#### **D. Non-conforming Uses**

- 1. Expansions:** Expansions of non-conforming uses are prohibited, except that non-conforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansions of such structures as allowed in Section 12.C.1.a.
- 2. Resumption Prohibited:** A lot, building or structure in or on which a non-conforming use is discontinued for a period exceeding one year, or which is superseded by a conforming use, may not again be devoted to a non-conforming use except that the Planning Board may, for good cause shown by the applicant, grant up to a one year extension to that time period. This provision shall not apply to the resumption of a use of a residential structure provided that the structure has been used or maintained for residential purposes during the preceding five (5) year period.
- 3. Change of Uses:** An existing non-conforming use may be changed to another non-conforming use provided that the proposed use has no greater adverse impact on the subject and adjacent properties and resources than the former use, as determined by the Planning Board. The determination of no greater adverse impact shall be made according to criteria listed in Section 12.C.4.

#### **E. Non-conforming Lots (for the purpose of this section the effective date is January 1, 1989)**

- 1. Non-conforming Lots:** A non-conforming lot of record as of the effective date of this Ordinance or amendment thereto may be built upon, without the need for a variance, provided that such lot is in separate ownership and not contiguous with any other lot in the same ownership, and that all provisions of this Ordinance except lot areas, lot width and shore frontage can be met. Variances relating to setback or other requirements not involving lot area, lot width or shore frontage shall be obtained by action of the Board of Appeals.
- 2. Contiguous Built Lots:** If two or more contiguous lots or parcels are in a single or joint ownership or record at the time of adoption of this Ordinance, if all or part of the lots do not meet the dimensional requirements of this Ordinance, and if a principal use or structure exists on each lot, the non-conforming lots may be conveyed separately or together, provided that the State Minimum Lot Size Law and Subsurface Wastewater Disposal Rules are complied with. If two or more principal uses or structures existed on a single lot of record on the effective date of this Ordinance, each may be sold on a separate lot provided that existing sewage disposal systems are functioning properly and providing the applicant for such a division demonstrates that sufficient suitable land is available on all lots to be created for replacement sewage disposal systems should be required as a result of future-malfunctioning.

This provision recognizes that Phippsburg has numerous clusters of rental cottages located on marginal soils, which in common ownership may have land available for replacement sewage disposal systems, but which broken up into separate lots may not have land available to replace malfunctioning sewage systems. When such lots are divided each lot thus created must be as conforming as possible to the dimensional requirements of this Ordinance, consistent with the need to assure land for replacement sewage disposal systems.

**3. Contiguous Lots - Vacant or Partially Built:** If two or more contiguous lots or parcels are in single or joint ownership of record at the time of or since adoption or amendment of this Ordinance, if any of these lots do not individually meet the dimensional requirements of this Ordinance or subsequent amendments, and if one or more of the lots are vacant or contain no principal structure the lots shall become combined to the extent necessary to meet the dimensional requirements.

### **Section 13. Establishment of Districts**

#### **A. Resource Protection District**

**1.** The Resource Protection District includes areas in which development would adversely affect water quality, productive habitat, biological ecosystems, or scenic and natural values. This district shall include the following areas when they occur within the limits of the shoreland zone, exclusive of the Stream Protection District, except that areas which are currently developed and areas which meet the criteria for the Village or General Development District need not be included within the Resource Protection District. Except for subsection A 1, below, areas encompassed within the Resource Protection District shall be the actual areas of flood plain, hydric soils, wetlands, natural sites, important wildlife habitat, etc. and no additional buffer zones are imposed.

**a.** Areas within 250 feet, horizontal distance, of the upland edge of freshwater wetlands, salt marshes and salt meadows (per IF&W map dated 1/1/73), and wetlands associated with ponds and rivers, which are rated "moderate" or "high" value waterfowl and wading bird habitat, including nesting and feeding areas, by the Maine Department of Inland Fisheries and Wildlife (MDIF&W) that are depicted on a Geographic Information System (GIS) data layer maintained by either MDIF&W or the Department as of December 31, 2008. For the purposes of this paragraph "wetlands associated with great ponds and rivers" shall mean are characterized by non-forested wetland vegetation and hydric soils that are contiguous with a great pond or river, and have a surface elevation at or below the water level of the great pond or river during the period of normal high water." Wetlands associated with great ponds or rivers" are considered to be part of that great pond or river.



*NOTE: The Natural Resources Protection Act, 36 M.S.R.A. sections 480-A through 480-Z, requires the Department of Environmental Protection to designate areas of "significant wildlife habitat". Significant wildlife habitat includes: Habitat for species appearing on the official state or federal lists of endangered or threatened species; high and moderate value deer wintering areas and travel corridors as defined by the Department of Inland Fisheries and Wildlife; high and moderate value waterfowl and wading bird habitats, including nesting and feeding areas as defined by the Department of Inland Fisheries and Wildlife; critical spawning and nursery areas for Atlantic sea run salmon as defined by the Atlantic Sea Run Salmon Commission; and shorebird nesting, feeding and staging areas and seabird nesting islands as defined by the Department of Inland Fisheries and Wildlife.*

2. Flood plains along rivers and flood plains along artificially formed great ponds along rivers, defined by the 100 year flood plain as designated on the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils. This district shall also include 100 year flood plains adjacent to tidal waters as shown on FEMA's Flood Insurance Rate Maps or Flood Hazard Boundary Maps.

3. Areas of two or more contiguous acres with sustained slopes of 20% or greater.

4. Areas of two (2) or more contiguous acres supporting wetland vegetation and hydric soils, which are not part of a freshwater or coastal wetland as defined, and which are not surficially connected to a water body during the period of normal spring high water.

*NOTE: These areas usually consist of forested wetlands abutting water bodies and non-forested wetlands.*

5. Land areas along rivers subject to severe bank erosion, undercutting, or river bed movement, and lands adjacent to tidal waters which are subject to severe erosion or mass movement, such as steep coastal bluffs.

## **B. Residential District**

1. The Residential District includes those areas suitable for residential and recreational development.

## **C. Village District**

1. The Village District includes areas of light commercial and residential uses. This district includes areas of two or more contiguous acres in size devoted to a mix of residential, low intensity business and commercial uses, including but not limited to, commercial fisheries, maritime activities, and commercial functionally water dependant uses. Industrial uses are prohibited excluding the packaging and processing of shellfish, finfish and other marine products.

## **D. The General Development District**

### **1. The General Development District includes the following types of areas:**

**a.** Areas of two or more contiguous acres devoted to commercial, industrial or intensive recreational activities, or a mix of such activities, including but not limited to the following:

**i.** Areas devoted to manufacturing, fabricating or other industrial activities.

**ii.** Areas devoted to wholesaling, warehousing, retail trade and service activities, or other commercial activities; and

**iii.** Areas devoted to intensive recreational development and activities, such as, but not limited to amusement parks, race tracks and fairgrounds

**b.** Areas otherwise discernible as having patterns of intensive commercial, Industrial or recreational uses. Portions of the General Development District may also include residential development. However, no area shall be designated as a General Development District based solely on residential use. In areas adjacent to great ponds, the designation of an area as a General Development District shall be based upon uses existing at the time of adoption of this Ordinance. There shall be no newly established General Development Districts or expansions in area of existing General Development Districts adjacent to great ponds

## **E. Stream Protection District**

1. The Stream Protection District includes all land areas within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream, exclusive of those areas within two-hundred and fifty (250) feet, horizontal distance, of the normal high-water horizontal distance, of the upland edge of a freshwater or coastal wetland. Where a stream and its associated shoreland area are located within two-hundred and fifty (250) feet, horizontal distance, of the above water bodies or wetlands, that land area shall be regulated under the terms of the shoreland district associated with that water body or wetland.

## **Section 14. Table of Land Uses**

1. All land use activities, as indicated in Table 1, Land Uses in the Shoreland Zone, shall conform with all of the applicable land use standards in Section 15. The district designation for a particular site shall be determined from the Official Shoreland Zoning Map. If a conflict exists between the table and the rest of the Ordinance, the Ordinance language shall govern. Notwithstanding the provisions of the table or other provisions of this ordinance, land that was cleared or mowed for agriculture, lawns, trails, foot paths or similar low impact land uses at least once in the past five years may continue to be mowed or cleared at the same interval as in the past or as needed for such activities to continue.

**Table 1. Land Uses in the Shoreland Zone**

**Key to Table 1:**

**yes\*** - No permit required, however the use must comply with all applicable Town, State and Federal Land Use Rules and Regulations.

**No** - Prohibited

**PB** - Allowed with permit issued by Planning Board

**CEO** - Allowed with permit issued by Code Enforcement Officer

**LPI** - Licensed Plumbing Inspector

*Abbreviations for Districts:*

**SP** - Stream Protection      **RP** - Resource Protection

**R** - Residential      **GD** - General Development

**V** - Village

	<b>SP</b>	<b>RP</b>	<b>R</b>	<b>GD</b>	<b>V</b>
1. Non-intensive recreational uses not requiring structures such as hunting, fishing and hiking	yes*	yes*	yes*	yes*	yes*
2. Motorized vehicular traffic on existing roads and trails	yes*	yes*	yes*	yes*	yes*
3. Forest management activities except for timber harvesting and land management roads	yes*	yes*	yes*	yes*	yes*
4. Timber harvesting	yes* 13	CEO 13	yes* 13	yes* 13	yes* 13
5. Clearing or removal of vegetation for activities other than timber harvesting	CEO 1	CEO 1	yes* 1	yes* 1	yes* 1
6. Fire prevention activities	yes*	yes*	yes*	yes*	yes*
7. Wildlife management practices	yes*	yes*	yes*	yes*	yes*
8. Soil and water conservation practices	yes*	yes*	yes*	yes*	yes*
9. Mineral exploration	no	yes* 2	yes* 2	yes* 2	yes* 2
10. Mineral extraction including sand and gravel extraction	no	PB 3	PB	PB	PB
	<b>SP</b>	<b>RP</b>	<b>R</b>	<b>GD</b>	<b>V</b>
11. Surveying and resource analysis	yes*	yes*	yes*	yes*	yes*
12. Emergency operations	yes*	yes*	yes*	yes*	yes*
13. Agriculture	PB	PB	yes*	yes*	yes*
14. Aquaculture	PB	PB	PB	PB	PB
15. Principal structures and uses					
a. One and two family residential and driveways	no	PB 8	CEO	PB 8	PB

b. Multi-unit residential	no	no	PB	PB	PB
c. Commercial	no	PB 5	PB	PB	PB
d. Industrial	no	no	no	PB	No
e. Governmental and institutional	no	PB 5	PB	PB	PB 5
f. Small non-residential facilities for educational or scientific purposes	PB	PB	PB	PB	PB
16. Structures accessory to allowed uses	PB 4	PB 4	CEO	CEO	CEO
17. Piers, docks, wharfs, bridges and other structures and uses extending over or below the normal high- water line or within a wetland	PB 10	PB 10	PB 10	PB 10	PB 10
18. Conversion of seasonal residences to year-round	PB 11	PB 11	PB 11	PB 11	PB 11
19. Home occupations	PB 12	PB 12	PB 12	PB 12	PB 12
20. Private sewage disposal systems for allowed uses	LPI	LPI	LPI	LPI	LPI
21. Essential Services					
a. Roadside distribution lines (34.5kV and lower)	CEO 6	CEO 6	yes* 9	yes* 9	yes* 9
b. Non-roadside or cross-country distribution lines involving ten poles or less in the Shoreland zone	PB 6	PB 6	CEO	CEO	CEO
c. Non-roadside or cross-country distribution lines involving eleven poles or more in the Shoreland zone	PB 6	PB 6	PB	PB	PB
d. Other essential services	PB 6	PB 6	PB	PB	PB
22. Service drops, as defined, to allowed uses	yes*	yes*	yes*	yes*	yes*
23. Public and private recreational areas involving minimal structural development	PB	PB	PB	PB	PB
24. Individual, private campsites	CEO	CEO	CEO	CEO	CEO
25. Campgrounds	no	no	PB	PB	PB
26. Road & driveway construction	PB	no 7	PB	PB	PB
27. Land management roads	yes*	PB	yes*	yes*	yes*
28. Parking areas	no	no	PB	PB	PB
29. Marinas	no	no	PB	PB	PB
30. Filling and earth moving of 10 cubic yards or less	CEO	CEO	yes*	yes*	yes*
31. Filling and earth moving of over 10 cubic yards	PB	PB	CEO	CEO	CEO
32. Signs	yes*	yes*	yes*	yes*	yes*
33. Uses similar to allowed uses	CEO	CEO	CEO	CEO	CEO
34. Uses similar to allowed uses requiring a CEO permit	CEO	CEO	CEO	CEO	CEO
35. Uses similar to allowed uses requiring a Planning Board permit	PB	PB	PB	PB	PB

**NOTES:**

*\* Must meet all Town, State and Federal land use rules and regulations.*

- 1. Cutting and removal shall be done in accordance with Sec. 15.Q.*
- 2. Requires permit from the CEO if more than 100 square feet of surface area, in total, is disturbed.*
- 3. Not allowed in RP areas so designated because of wildlife value.*
- 4. A variance is required from the Board of Appeals.*
- 5. Only functionally water-dependant uses and uses accessory to such water-dependant uses.*
- 6. See Section 15.M.*
- 7. See Section 15.I*
- 8. See Section 17.E. Special Exceptions. Two-family residential structures are prohibited.*
- 9. Permit not required but must file a written "notice of intent to construct" with CEO.*
- 10. Permit shall be issued only after written approval from the Harbor Master.*
- 11. Requires approval by Licensed Plumbing Inspector (LPI) prior to Planning Board (PB) application.*
- 12. Planning Board review is required to determine if the use is in compliance with Sec 15 G 2 or if a new business permit is required. Standard Planning Board fee applies.*
- 13. See Section 15*

**Section 15. Land Use Standards:** All land use activities within the shoreland zone shall conform with the following provisions, if applicable.

**A. Minimum Lot Standards**

	Lot Area (sq. ft.)	Shore Frontage (ft.)
<b>1. Residential per Dwelling Unit</b>		
<b>a. Within the Shoreland Zone Adjacent to Tidal Areas</b>	40,000	150
<b>b. Within the Shoreland Zone Adjacent to Non-Tidal Areas</b>	40,000	200
<b>2. Commercial or Industrial per Principal Structure</b>		
<b>a. Functionally Water Dependant Uses within the Shoreland Zone Adjacent to Tidal Areas in the Village District</b>	None	None
<b>b. Within the Shoreland Zone Adjacent to Tidal Areas</b>	40,000	200
<b>c. Within the Shoreland Zone Adjacent to Non-Tidal Areas</b>	60,000	300

### **3. Public and Private Recreational Facilities**

#### **a. Within the Shoreland Adjacent to Tidal and Non-Tidal Areas**

40,000

200

### **4. Road Frontage**

**a.** Commercially Functionally Water Dependant Uses shall be exempt from minimum road frontage. Residential lots shall have a minimum of one hundred-fifty (150) feet of frontage on a public or private way. Multi-family lots shall have a minimum of two hundred (200) feet of frontage on a public or private way. This section shall not prohibit construction on lots that do not front a public or private way, providing the minimum lot size is maintained and providing that a square one hundred-fifty (150) feet on a side may be located within the boundaries of the lot.

**5.** Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included toward calculating minimum lot area.

**6.** Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971.

**7.** The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.

**8.** If more than one residential dwelling unit, governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

**9.** Cluster housing within the shoreland zone is allowed provided that the overall dimensional requirements, including frontage and lot area per dwelling unit, are met. When determining whether dimensional requirements are met, only land area within the shoreland zone shall be considered.

## **B. Principal and Accessory Structures**

1. All new principal and accessory structures shall be set back at least one hundred (100) feet, horizontal distance, from the normal high-water line of great ponds and rivers that flow to great ponds and at least seventy-five (75) feet, horizontal distance, from the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, except that in the General Development District the setback from the normal high-water line shall be at least twenty-five (25) feet, horizontal distance, and in the Village District the setback from the normal high-water line shall be at least fifty (50) feet, horizontal distance. However, for Commercially Functionally Water-Dependent uses there shall be no minimum setback within the Village District. In the Resource Protection District the setback requirement shall be 250 feet, horizontal distance, except for structures, roads, parking spaces or other regulated objects specifically allowed in that district in which case the setback requirements specified above shall apply. In addition:

a. The water body, tributary stream, or wetland setback provision shall neither apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers, docks and retaining walls, nor to other functionally water-dependent uses.

b. The Planning Board may increase the required setback of a proposed structure as a condition of permit approval if necessary to accomplish the purposes of this Ordinance in cases where a greater setback may be appropriate. These include, but are not limited to: unmapped wetlands, areas of steep slope; shallow or erodible soils; or where an adequate vegetative buffer does not exist.

c. For principal structures, water and wetland setback measurements shall be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being “highly unstable” or “unstable” by the Maine Geological Survey pursuant to its “Classification of Coastal Bluffs” and published on the most recent Coastal Bluff map. If the applicant and the permitting official(s) are in disagreement as to the specific location of a “highly unstable” or “unstable” bluff, or where the top of the bluff is located, the applicant may at his or her expense, employ a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, a Maine State Geologist, or other qualified individual to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Appeals.

**d.** On a non-conforming lot of record on which only a residential structure exists and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the code enforcement officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure shall not exceed eighty (80) square feet in area or eight (8) feet in height, and shall be located as far from the shoreline or tributary stream as practical and shall meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case shall the structure be located closer to the shoreline or tributary stream than the principal structure.

**e.** Setbacks for public and private roads shall be as follows:

**i.** Seventy-five (75) feet from the center of the traveled way; along Route 209 (Main Road) starting at the Town Line at Winnegance to the Main Entrance of the State Park; from beginning of Route 216 (Small Point Road) to the Club Road; from the beginning of Sebasco Road to the culvert at the north end of Wat-tuh Lake; from the beginning of the West Point Road to Holland Drive.

**ii.** Fifty (50) feet from the center of the traveled way for all other publicly maintained roads.

**iii.** Ten (10) feet from the edge of the traveled way for privately maintained roads, but in no case less than twenty (20) feet from a property line.

**iv.** All new or relocated structures shall be set back from an abutting boundary line by a minimum of twenty (20) feet.

**2.** Principal or accessory structures and expansions of existing structures which are permitted in the Resource Protection, Residential, Village, and Stream Protection Districts, shall not exceed thirty-five (35) feet in height- the vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure. This provision shall not apply to structures such as transmission towers, windmills, antennas, chimneys, steeples, and similar structures having no floor area.

**3.** The lowest floor elevation or openings of all buildings and structures, including basements, shall be elevated at least one foot above the elevation of the 100 year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood- plain soils.



**4.** The total footprint area of all structures, parking lots and other non-vegetated surfaces, within the shoreland zone shall not exceed twenty (20) percent of the lot or a portion thereof, located within the shoreland zone, including land area previously developed, except in the General Development District adjacent to tidal waters and rivers that do not flow to great ponds, for Commercially Functionally Water Dependent use within the Village District and all Town owned landings regardless of District where lot coverage shall not exceed seventy (70) percent. This section shall not apply to any Town owned landing (“town landing”) existing as of passage of this amendment on May 4-5, 2010 having an area of .25 acres (1/4 acre) or less, on which there would otherwise be a limitation on non-vegetated surfaces, particularly those with functionally water-dependent use, subject to the approval of the Planning Board on a case-by-case basis.

**5.** Retaining walls that are not necessary for erosion control shall meet the structure setback requirement, except for low retaining walls and associated fill provided all of the following conditions are met:

- a.** The site has been previously altered and an effective vegetated buffer does not exist;
- b.** The wall(s) is (are) at least 25 feet, horizontal distance, from the normal high-water line of a water body, tributary stream, or upland edge of a wetland;
- c.** The site where the retaining wall will be constructed is legally existing lawn or is a site eroding from lack of naturally occurring vegetation, and which cannot be stabilized with vegetative plantings;
- d.** The total height of the wall(s), in the aggregate, are no more than 24 inches;
- e.** Retaining walls are located outside of the 100-year floodplain on rivers, streams, coastal wetlands, and tributary streams, as designated on the Federal Emergency Management Agency’s (FEMA) Flood Insurance Rate Maps or Flood Hazard Boundary Maps, or the flood of record, or in the absence of these, by soil types identified as recent flood plain soils.
- f.** The area behind the wall is revegetated with grass, shrubs, trees, or a combination thereof, and no further structural development will occur within the setback area, including patios and decks; and

**g.** A vegetated buffer area is established within 25 feet, horizontal distance, of the normal high-water line of a water body, tributary stream, or upland edge of a wetland when a natural buffer area does not exist. The buffer area must meet the following characteristics:

**i.** The buffer must include shrubs and other woody and herbaceous vegetation. Where natural ground cover is lacking the area must be supplemented with leaf or bark mulch;

**ii.** Vegetation plantings must be in quantities sufficient to retard erosion and provide for effective infiltration of storm water runoff;

**iii.** Only native species may be used to establish the buffer area;

**iv.** A minimum buffer width of 15 feet, horizontal distance, is required, measured perpendicularly to the normal high-water line or upland edge of a wetland;

**v.** A footpath not to exceed the standards in Section 15.P.2.a, may traverse the buffer;

*NOTE: If the wall and associated soil disturbance occurs within 75 feet, horizontal distance, of a water body, tributary stream or coastal wetland, a permit pursuant to the Natural Resource Protection Act is required from the Department of Environmental Protection.*

**6.** Notwithstanding the requirements stated above, stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided: that the structure is limited to a maximum of four (4) feet in width; that the structure does not extend below or over the normal high-water line of a water body or upland edge of a wetland, (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A., section 480-C); and that the applicant demonstrates that no reasonable access alternative exists on the property.

**7.** All additions, expansions, new construction or construction of accessory structures and repairs thereto, must apply for a permit when the value of the work exceeds \$1,000.

**8.** Erosion Control measures sufficient to avoid significant water pollution from erosion are required for any activity within the Shoreland Zone that results in disturbance of the soil.

### **C. Temporary Residential Uses**

**1.** A mobile home or recreational vehicle that otherwise meets the standards of this Ordinance, with an occupancy permit, may be located on a lot for up to 24 months to provide temporary housing during the construction of a new home that is being constructed wholly or in part by the owner of the land. Upon completion of the house or within 24 months, whichever is less, the occupancy permit for the temporary housing shall expire and any mobile home shall be removed.

2. Friends and relatives may visit Phippsburg residents and locate recreational vehicles or tent sites on a lot with a permanent residential structure for up to seven consecutive days without a permit. After seven days, the Codes Enforcement Officer may issue up to two (2) seasonal permits, at any given time, for up to a total of one hundred and twenty (120) days per calendar year, to the property owner of the lot where the recreational vehicle or tent site is located. These provisions do not apply to any commercial or rental purposes.

*NOTE: For a seasonal permit to be issued the existing dwelling must meet the standards of the State Plumbing Code. All temporary occupants must use the sanitary facilities in the existing dwelling unless the unit has a self-contained sanitary system. Wastes from recreational vehicles shall not be connected to the septic system of the dwelling being visited, without the Licensed Plumbing Inspectors approval.*

3. The Codes Enforcement Officer may issue up to two (2) seasonal permits, at any given time, for recreational vehicles to be located on a vacant lot for temporary non-commercial use for up to a total of one hundred and twenty (120) days per calendar year. A seasonal permit must be issued to the property owner of the lot where the recreational vehicle is located. The applicant must provide a written sewage disposal plan. The applicant must also produce written authorization from any proposed dumping station.

4. No permanent foundation, except for gravel pads, shall be permitted and no permanent structure, except canopies, shall be attached to any temporary dwelling.

5. Temporary residential uses must meet all applicable shoreland zoning requirements.

#### **D. Piers, Docks, Wharfs, Bridges and Other Structures and Uses Extending Over or Beyond the Normal High-Water Line of a Water Body or Within a Wetland**

1. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.

2. The location shall not interfere with existing developed or natural beach areas.

3. The facility shall be located so as to minimize adverse effects of fisheries.

4. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with the surrounding character and uses of the area. A temporary pier, dock or wharf in non-tidal waters shall not be wider than six feet for non-commercial uses.

5. No new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland unless the structure requires direct access to the water as an operational necessity.

6. New permanent piers and docks on non-tidal waters shall not be permitted unless it is clearly demonstrated to the Planning Board that a temporary pier or dock is not feasible, and a permit has been obtained from the Department of Environmental Protection, pursuant to the Natural Resources Protection Act.

7. No existing structures built on, over or abutting a pier, dock, wharf or other structure extending beyond the normal high-water line of a water body or within a wetland shall be converted to residential dwelling units in any district.

8. Except in the General Development Districts and Commercially Functionally Water Dependant Uses within the Village Districts, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

9. Notwithstanding any other provisions of this ordinance a bridge may be constructed over a stream or wetland if a bridge is the only practical way to reach other property in the same ownership, providing that the bridge is constructed so as to minimize its impact on the stream or wetland, and providing that the owner has all required state permits.

*NOTE: New Permanent structures, and expansions thereof, projecting into or over water bodies shall require a permit from the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S.A., section 480-C. Permits may also be required from the Army Corps of Engineers if located in navigable waters.*

**E. Campgrounds: Campgrounds shall conform to the minimum requirements imposed under State licensing procedures and the following:**

1. Campgrounds shall contain a minimum of five thousand (5,000) square feet of land, not including roads and driveways, for each site. Land supporting wetland vegetation, and land below the normal high-water line of a water body shall not be included in calculating land area per site.

2. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back in accord with Town of Phippsburg Shoreland Zone map and all other required set backs.

3. Recreational vehicles shall not be located on any type of a permanent foundation except for a gravel pad, and no structure(s) except canopies shall be attached to the recreational vehicle.

**F. Individual Private Campsites: Individual, private campsites not associated with campgrounds are permitted provided the following conditions are met:**

1. One campsite per lot existing on the effective date of this Ordinance, or forty thousand (40,000) square feet of lot area within the shoreland zone, whichever is less, may be permitted.

2. The areas intended for placement of a recreational vehicle, tent or shelter, and utility and service buildings shall be set back in accord with Town of Phippsburg Shoreland Zone map and all other required set backs.

3. Only one recreational vehicle shall be allowed on a campsite. The recreational vehicle shall not be located on any type of permanent foundation except for a gravel pad, and no structure except a canopy shall be attached to the recreational vehicle.
4. The clearing of vegetation for the sitting of the recreational vehicle, tent or similar shelter in a Resource Protection District shall be limited to one thousand (1000) square feet.
5. A written sewage disposal plan describing the proposed method and location of sewage disposal shall be required for each campsite and shall be approved by the Local Plumbing Inspector. Where disposal is off-site, written authorization from the receiving facility or land owner is required.
6. When a recreational vehicle, tent or similar shelter is placed on-site for more than one hundred and twenty (120) days per calendar year, all requirements for residential structures shall be met, including the installation of a subsurface sewage disposal system in compliance with the State of Maine Subsurface Waste Water Disposal Rules unless served by public sewage facilities.

## **G. Business Uses**

### **1. New Business Permit**

- a. A new business shall not begin operation, unless exempted under G.2, without first obtaining a permit. A change of ownership/ management, of an existing business without any change shall require a review within ninety (90) days by the Planning Board for a Transfer of Permit. Any cessation of use exceeding two (2) years, expansion or change of use of an existing business shall be considered a new business for the purposes of this Ordinance and shall require a new business permit. The Town shall provide application forms.
- b. No new business permit shall be issued until a public hearing has been held, notices of which shall be posted in two public places and published in a newspaper with general circulation in the Town at least seven (7) days and not more than fourteen (14) days prior to the hearing.
- c. Applicant shall notify abutters of the proposed business plan. Proof of such notice shall be presented with the application at the public hearing. Acceptable proof shall consist of an abutter's signature on the application form, an abutter's statement and signature on a separate document, or a certified mail return receipt showing either a signature or post office failure to deliver to the abutter's last known address.
- d. New business hearings shall be held by the Planning Board. A quorum shall be any five (5) members of the Planning Board. Those members present at the hearing shall, by a majority vote, approve, approve with conditions, or deny all applications for a new business. Members shall render their decisions in writing, specifying the reasons for denial or imposition of conditions.

**e.** If a permit is granted, such permit shall be posted at the place of business and visible to the public. A new business permit shall become void one (1) year after issuance, if the business is not operational. The permitting authority may grant up to a one (1) year extension.

**f.** Applicant shall pay a \$50.00 new business permit fee plus \$45.00 for each public hearing or site walk to defray the cost of advertising. For a business Transfer Permit, standard Planning Board fees apply.

**2. Home Business:** Home businesses need not obtain a new business permit as required by Section G.1.a. however, an owner shall seek a determination by the Planning Board on their proposal to see if said proposal meets the requirements of this Section including reasonable and safe access and egress as well as parking requirements.

**a.** No unreasonable nuisance, traffic congestion, waste discharge, offensive noise, vibration, smoke, dust, odors, heat, glare or radiation shall be generated.

**b.** Signs shall be restricted to one on-premise totaling not more than eight (8) square feet.

**c.** Home businesses shall be carried on wholly within the principal building or other structure accessory to it, or on the grounds of the property in a manner such that impact on neighbors is minimal. The business shall be clearly secondary to the use of the dwelling unit for residential purposes.

**d.** Not more than two (2) persons other than family members residing in the home shall be employed in a home business.

**e.** Home businesses may not expand beyond the limits imposed by this section without fulfilling all the requirements of this Ordinance and obtaining a permit under G.1.

**f.** the following are examples of a home business:

**i.** Sale of home-grown vegetables and plants, crafts made in the home, antiques, and other traditional home business activities that have no significant impact on the character of a residential neighborhood.

**ii.** Service businesses such as plumbing, carpentry, and home maintenance services in which at least 75 percent of the activities take place on the premises of the customer.

**iii.** Home beauty and barbershops.

**iv.** Home mechanic shops.

- v. Sale of fish or other marine products harvested /landed by the home business owner(s).
- vi. Wharves and piers, storage buildings and the outdoor storage of boats, traps, nets, and other gear used in the commercial harvesting of marine products.
- vii. Use of a residence to provide accounting, insurance or tax return services or similar activity.
- viii. Incidental use of a home as an office for municipal business activities.
- ix. Yard or garage sales, limited to four per year. The duration of each sale shall not exceed three (3) consecutive days.
- x. A Bed and Breakfast establishment with not more than two (2) rental rooms may serve breakfast to overnight guests only. No meals shall be served after 11:30 a.m. Such establishments shall meet State requirements and Local Plumbing Inspector approval that the waste water system is adequate.
- xi. Businesses that the Planning Board may determine are substantially similar to the above.

**3. Buffer zones:** No business shall be established, except as permitted by the Planning Board under the provisions of G.3 or exempted in G.2, unless the following buffer zones are provided between the business, including any accessory buildings and parking lots, and adjacent residential lot lines:

- a. Commercial and other non-residential buildings or other commercial or industrial activities shall have a minimum side and rear yard distance of at least 100 feet from residential lot lines.
- b. Notwithstanding the above, restaurants with musical entertainment, bars, dance halls, clubs offering musical entertainment, motels, trailer parks, mobile home parks, campgrounds, kennels and boarding kennels, industrial uses, and shopping centers shall have a minimum rear and side yard distance of at least 150 feet from the nearest residential lot line.
- c. The Planning Board may approve substitute buffer zones providing the purposes of this Ordinance are maintained. Substitute buffer zones may be approved when the topography of the land, the nature of the vegetation, or building(s) provides screening that is equal in protection to the required width of buffer zones. Substitute buffer zones may also be approved when the character of a neighborhood is predominantly commercial.

**d.** The Planning Board shall approve, deny, or approve with conditions all applications for substitute buffer zones. The applicant shall have the burden of demonstrating that the topography of the land, the nature of the vegetation, or building(s) provides screening that is equal in protection to the required width of buffers, or that the character of the neighborhood is predominantly commercial. Substitute buffer zones shall not be considered a variance.

#### **4. Standards for Commercial and Industrial Uses**

**a.** The applicant shall have the burden of demonstrating that the proposed business shall be located and designed so as to prevent unreasonable nuisance to nearby properties, parking on adjacent public roads, danger to children, unsanitary waste disposal, noise, vibration, smoke, fumes, dust, noxious odors, heat, glare or radiation that exceeds conditions previously detectable at the lot boundaries of other properties in the general area.

**b.** New businesses shall also demonstrate that they meet the following standards and requirements:

**i.** The natural landscape shall be preserved insofar as practical by minimizing tree removal and retaining existing vegetation. Where practical, new landscaping may be required that will define, soften or screen the appearance of the business from adjacent public ways or nearby residential areas, except that establishments catering to the general public need not be screened from public roads.

**ii.** New businesses shall provide safe access to and egress from roads used by the public without causing traffic congestion.

**iii.** Surface waters shall be drained so as not to damage adjacent lands.

**iv.** Exposed storage areas, exposed machinery, and utility buildings shall have sufficient setbacks and screening to provide a visual buffer sufficient to prevent unreasonable adverse impact on other land uses in the area.

**v.** Evidence shall be provided that sufficient water is available for the proposed use and that adequate water for existing users shall not be diminished.

**vi.** New businesses shall provide sanitary facilities sufficient for its employees and, where appropriate, customer facilities may be required.



**vii.** Junkyards and automobile graveyards as defined by State Law (currently, Title 30, M.R.S.A., Section 3752) shall not locate within 600 feet of any public way or adjacent residential property line unless the Planning Board finds that screening and forest vegetation permits lesser buffers without adversely affecting adjacent properties, but no junkyard shall be located that is less than 100 feet from the nearest public road or right of way or adjacent property lines. In no instance shall a junkyard or automobile graveyard be located so that discarded vehicles or other wastes are visible from public ways or adjacent properties.

**c.** The following new commercial and industrial uses are prohibited within the shoreland zone:

**i** Auto washing facilities

**ii** Auto or other vehicle service and/or repair operations, including body shops

**iii** Chemical and bacteriological laboratories

**iv** Storage of chemicals, including herbicides, pesticides or fertilizers, other than amounts normally associated with individual households or farms

**v** Commercial painting, wood preserving, and furniture stripping

**vi** Dry cleaning establishments

**vii** Electronic circuit assembly

**viii** Laundromats, unless connected to a sanitary sewer

**ix** Metal plating, finishing, or polishing

**x** Petroleum or petroleum product storage and/or sale except storage on same property as use occurs and except for storage and sales associated with Commercially Functionally Water Dependant Uses

**xi** Photographic processing

**xii** Printing

## **H. Parking Areas/ Facilities**

1. Parking areas/facilities shall meet the shoreline and tributary stream setback requirements for structures for the district in which such areas are located, except that in the Village District parking areas/facilities shall be set back at least twenty-five (25) feet, horizontal distance, from the shoreline. The setback requirement for parking areas/facilities serving public boat launching facilities, in Districts other than the General Development I District and Village Districts shall be no less than fifty (50) feet, horizontal distance, from the shoreline or tributary stream if the Planning Board finds that no other reasonable alternative exists further from the shoreline or tributary stream. There shall be no such minimum setback requirement(s) for any parking areas which are part of any Town owned landing ("town landing") existing as of passage of this amendment on May 4-5, 2010 having an area of .25 acres (1/4 acre) or less, particularly those with functionally water-dependent use, subject to the approval of the Planning Board on a case-by-case basis.

2. Parking areas/facilities shall be adequately sized for the proposed use and shall be designed to prevent storm water runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site.

3. In determining the appropriate size of proposed parking areas/facilities, the following shall apply:

a. Typical parking space: Minimum ten (10) feet wide and twenty (20) feet long, except that parking spaces for a vehicle and boat trailer shall be forty (40) feet long.

b. Internal travel aisles: Minimum twenty (20) feet wide

**I. Roads and Driveways:** The following standards shall apply to the construction of roads and/or driveways and drainage systems, culverts and other related features.

1. Roads and driveways shall be set back at least one-hundred (100) feet, horizontal distance, from the normal high-water line of a great pond classified GPA or a river that flows to a great pond classified GPA, and seventy-five (75) feet, horizontal distance from the normal high -water line of other water bodies, tributary streams, or the upland edge of a wetland unless no reasonable alternative exists as determined by the Planning Board. If no other reasonable alternative exists, the road and/or driveway setback requirement shall be no less than fifty (50) feet, horizontal distance, upon clear showing by the applicant that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed so as to avoid sedimentation of the water body, tributary stream, or wetland.

**a.** On slopes of greater than twenty (20) percent the road and/or driveway setback shall be increased by ten (10) feet, horizontal distance, for each five (5) percent increase in slope above twenty (20) percent.

**b.** Section 15.I.1. does not apply to approaches to water crossings nor to roads or driveways that provide access to permitted structures, and facilities located nearer to the shoreline or tributary stream due to a Commercially Functionally Water Dependent Use necessity, excluding temporary docks for recreational uses. Roads and driveways providing access to permitted structures within the setback area shall comply fully with the requirements of Section 15.I.1. except for that portion of the road or driveway necessary for direct access to the use.

**2.** Existing public roads may be expanded within the legal road right of way regardless of their setback from a water body, tributary stream or wetland.

**3.** New roads and driveways are prohibited in a Resource Protection District the Planning Board may issue a permit for a road or driveway to provide access to permitted uses and legally existing non-conforming uses within the District, if the Applicant can clearly demonstrate that:

**a.** No reasonable alternative route or location is available outside the Resource Protection area; and

**b.** The proposed road or driveway is setback as far as practicable from the normal high water line of the water body, tributary stream, or upland edge of a wetland; and

**c.** The proposed road or driveway is located and designed to minimize any adverse environmental impact to the protected resource, but no closer than fifty (50) feet.

**4.** Road and driveway banks shall be no steeper than a slope of two (2) horizontal to one (1) vertical, and shall be graded and stabilized in accordance with the provisions for erosion and sedimentation control contained in Section 15.R.

**5.** Road and driveway grades shall be no greater than ten (10) percent except for segments of less than two hundred (200) feet.

**6.** In order to prevent road and driveway surface drainage from directly entering water bodies, tributary streams or wetlands, roads and driveways shall be designed, constructed, and maintained to empty onto an unscarified buffer strip at least (50) feet plus two times the average slope, in width between the outflow point of the ditch or culvert and the normal high-water line of a water body, tributary stream, or upland edge of a wetland. Surface drainage which is directed to an unscarified buffer strip shall be diffused or spread out to promote infiltration of the runoff and to minimize channelized flow of the drainage through the buffer strip.

7. Ditch relief (cross drainage) culverts, drainage dips and water turnouts shall be installed in a manner effective in directing drainage onto unscarified buffer strips before the flow gains sufficient volume or head to erode the road, driveway, or ditch. To accomplish this, the following shall apply:

a. Ditch relief culverts, drainage dips and associated water turnouts shall be spaced along the road or driveway at intervals no greater than indicated in the following table:

<b><u>Grade (Percent)</u></b>	<b><u>Spacing (Feet)</u></b>
0 – 2	250
3 – 5	200 – 135
6 – 10	100 – 80
11 – 15	80 – 60
16 – 20	60 – 45
21 +	40

b. Drainage dips may be used in place of ditch relief culverts only where the grade is ten (10) percent or less.

c. On sections having slopes greater than ten (10) percent, ditch relief culverts shall be placed at approximately a thirty (30) degree angle down slope from a line perpendicular to the centerline of the road or driveway.

d. Ditch relief culverts shall be sufficiently sized and properly installed in order to allow for effective functioning and their inlet and outlet ends shall be stabilized with appropriate materials.

e. Driveway culverts at curb cuts and public ways shall have a minimum internal diameter of 15 inches, a minimum length of 20 feet, an armored embankment around the inlet end constructed of 6 inch minus stone and an armored erosion control basin with an armored embankment at the outlet end constructed of 6 inch minus stone. The installation shall comply with the current State of Maine storm water control regulations.

8. Ditches, culverts, bridges, dips, water turnouts and other storm water runoff control installations associated with roads and driveways shall be maintained on a regular basis to assure effective functioning.

**J. Signs: The following provisions shall govern the use of signs:**

**1. General**

- a.** A two-sided sign is one sign for the purpose of this section.
- b.** Moving, animated, or mobile chassis mounted signs are prohibited. Signs may be illuminated by shielded non-flashing lights.
- c.** No free-standing or projecting sign shall extend higher than twenty (20) feet above the ground.
- d.** No sign shall be located within five (5) feet of a road or other lot line.
- e.** One flag, for commercial or home business purposes is allowed. The flag shall not exceed fifteen (15) square feet.
- f.** State Department of Transportation off-premise directional signs are allowed. All other signs which announce, advertise, or name any service or product not available, sold or manufactured on the premises are prohibited.
- g.** The Town has the authority to remove any signs not meeting the requirements of Section J.

**2. Commercial Signs**

- a.** Free-standing signs: One free standing sign per business is allowed. The sign shall not exceed twenty-five (25) square feet.
- b.** Projecting Signs: One projecting sign per business is allowed. The sign shall not exceed twenty-five (25) square feet.
- c.** Signs on Buildings: Signs shall be limited to the aggregate of one (1) square foot for each linear foot of road side length of the principal structure on the premises. Signs on the building shall not extend beyond the height of the building.
- d.** A business shall have no more than two (2) of the above three (3) types of signs (that is, (a), (b), or (c) above) and the aggregate shall not exceed fifty (50) square feet.
- e.** For the benefit of boaters, one additional sign facing the water is allowed. This sign may be placed at or near the water and shall not exceed fifty (50) square feet.

### **3. Home Business Signs**

**a.** Home businesses may display one sign relating to goods or services rendered on the premises. The sign shall not exceed eight (8) square feet.

### **4. Name Signs**

**a.** Non-commercial name signs shall be allowed, provided such signs, in the aggregate, shall not exceed eight (8) square feet and providing that not more than two (2) such signs shall be located on the premises.

### **5. Temporary Signs**

**a.** Two (2) real estate signs, each not exceeding four (4) square feet are allowed on the property being sold, leased or developed. One directional sign, not exceeding four (4) square feet leading to the property is allowed. A waterfront lot may have one (1) additional sign facing the water, at or near the water.

**b.** A construction sign not exceeding thirty-two (32) square feet shall be allowed on the premises.

**c.** Political campaign signs not exceeding thirty-two (32) square feet shall be allowed.

**d.** All temporary signs shall be removed within seven (7) days after fulfilling their purpose.

### **6. Exemptions: for the purposes of this section, the term “sign” shall not include:**

**a.** Signs erected for public safety and welfare or pursuant to any governmental function.

**b.** Directional signs solely indicating entrance and exit at driveway locations, containing no advertising material, and where display area does not exceed two (2) square feet or extend higher than seven (7) feet, above ground level.

**c.** Signs relating to trespassing and hunting, not exceeding two (2) square feet.

**d.** All non-commercial or non-home business flags are allowed.

## **K. Storm Water Runoff**

1. All new construction and development shall be designed to minimize storm water runoff from the site in excess of the natural predevelopment conditions. Where possible, existing natural runoff control features, such as berms, swales, terraces and wooded areas, shall be retained in order to reduce runoff and encourage infiltration of storm waters.

2. Storm water runoff control systems shall be maintained as necessary to ensure proper functioning.

*NOTE: The Stormwater Management Law (38 M.R.S.A. section 420-D) requires a full permit to be obtained from the DEP prior to construction of a project consisting of 20,000 square feet or more of impervious area or 5 acres or more of a developed area in an urban impaired stream watershed or most-at-risk lake watershed, or a project with 1 acre or more of developed area in any other stream, coastal or wetland watershed. A permit-by-rule is necessary for a project with one acre or more of disturbed area but less than 1 acre impervious area (20,000 square feet for most-at-risk lakes and urban impaired streams) and less than 5 acres of developed area. Furthermore, a Maine Construction General Permit is required if the construction will result in one acre or more of disturbed area.*

## **L. Septic Waste Disposal**

1. All subsurface sewage disposal systems shall be installed in conformance with the State of Maine Subsurface Wastewater Disposal Rules (and the following: a) clearing or removal of woody vegetation necessary to site a new system and any associated fill extensions, shall not extend closer than seventy-five (75) feet, horizontal distance, from the normal high-water line of a water body or the upland edge of a wetland and b) a holding tank is not allowed for a first-time residential use in the shoreland zone.

*NOTE: The Maine Subsurface Wastewater Disposal Rules require new systems, excluding fill extensions, to be constructed no less than one hundred (100) horizontal feet from the normal high-water line of a perennial water body. The minimum setback distance for a new subsurface disposal system shall not be reduced by variance.*

## **M. Essential Services**

1. Where feasible, the installation of essential services shall be limited to existing public ways and existing service corridors.

2. The installation of essential services, other than road-side distribution lines, is not allowed in a Resource Protection or Stream Protection District, except to provide services to a permitted use within said district, or except where the applicant demonstrates that no reasonable alternative exists. Where allowed, such structures and facilities shall be located so as to minimize any adverse impacts on surrounding uses and resources, including visual impacts.

3. Damaged or destroyed public utility transmission and distribution lines, towers and related equipment may be replaced or reconstructed without a permit.

## **N. Mineral Exploration and Extraction**

**1.** Mineral exploration to determine the nature or extent of mineral resources shall be accomplished by hand sampling, test boring, or other methods which create minimal disturbance of less than one hundred (100) square feet of ground surface. A permit from the Code Enforcement Officer shall be required for mineral exploration which exceeds the above limitation. All excavations, including test pits and holes, shall be immediately capped, filled or secured by other equally effective measures, to restore disturbed areas and to protect the public health and safety. Mineral extraction may be permitted under the following conditions:

**a.** A reclamation plan shall be filed with, and approved, by the Planning Board before a permit is granted. Such plan shall describe in detail procedures to be undertaken to fulfill the requirements of Section 15 (N) (4) below.

**b.** No part of any extraction operation, including drainage and runoff control features, shall be permitted within one hundred twenty-five (125) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland. Extraction operations shall not be permitted within seventy-five (75) feet, horizontal distance, of any property line, without written permission of the owner of such adjacent property.

**c.** Developers of new gravel pits along Significant River Segments shall demonstrate that no reasonable mining site outside the shoreland zone exists. When gravel pits must be located within the zone, they shall be set back as far as practicable from the normal high-water line and no less than seventy-five (75) feet and screened from the river by existing vegetation.

**d.** Within twelve (12) months following the completion of extraction operations at any extraction site, which operations shall be deemed complete when less than one hundred (100) cubic yards of materials are removed in any consecutive twelve (12) month period, ground levels and grades shall be established in accordance with the following:

**i.** All debris, stumps, and similar material shall be removed for disposal in an approved location, or shall be buried on-site. Only materials generated on-site may be buried or covered on-site.

*NOTE: The State of Maine Solid Waste Laws, 38- M, R, S, A, section 1301 and the solid waste management rules: Chapters 400-419 of the Department of Environmental Protection's regulations may contain other applicable provisions regarding disposal of such materials.*

**ii.** The final graded slope shall be two and one-half to one (2 1/2:1) slope or flatter.



iii. Top soil or loam shall be retained to cover all disturbed land areas, which shall be reseeded and stabilized with vegetation native to the area. Additional topsoil or loam shall be obtained from off-site sources if necessary to complete the stabilization project.

e. In keeping with the purposes of this Ordinance, the Planning Board may impose such conditions as are necessary to minimize the adverse impacts associated with mineral extraction operations on surrounding uses and resources.

## **O. Agriculture**

1. All spreading of manure shall be accomplished in conformance with the Manure Utilization Guidelines published by the Maine Department of Agriculture on November 1, 2001, and the Nutrient Management Law (7 M.R.S.A. Sections 4201 - 4209).

2. Manure shall not be stored or stockpiled within one hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond, classified GPA, or within seventy-five (75) feet horizontal distance, of other water bodies, tributary streams, or wetlands. All manure storage areas within the shoreland zone must be constructed or modified such that the facility produces no discharge of effluent or contaminated storm water.

3. Agricultural activities involving tillage of soil greater than forty thousand (40,000) square feet in surface area, within the shoreland zone shall require a Soil and Water Conservation Plan to be filed with the Planning Board. Non - conformance with the provisions of said plan shall be considered to be a violation of this Ordinance.

*NOTE: Assistance in preparing a Conservation Plan may be available through the local Soil and Water Conservation District office.*

4. There shall be no new tilling of soil within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, from other water bodies and coastal wetlands; nor within twenty-five (25) feet, horizontal distance, of tributary streams, and freshwater wetlands. Operations in existence on the effective date of this ordinance and not in conformance with this provision may be maintained.

5. Newly established livestock grazing areas shall not be permitted within one hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA; within seventy-five (75) feet, horizontal distance, of other water bodies and coastal wetlands, nor; within twenty-five (25) feet, horizontal distance, of tributary streams, and freshwater wetlands. Livestock grazing associated with ongoing farm activities, and which are not in conformance with the above setback provisions may continue, provided that such grazing is conducted in accordance with a Conservation Plan.

*NOTE: 17 M.R.S.A. sections 2805(4) require a municipality to provide the Commissioner of Agriculture, Food and Rural Resources with a copy of any proposed ordinance that impacts farm operations. The law further requires the Commissioner to review the proposed ordinance and advise the municipality if the proposed ordinance would restrict or prohibit the use of best management practices. A copy of a shoreland zoning ordinance that regulates no more restrictively than contained in these Guidelines need not be provided to the Commissioner of Agriculture, Food and Rural Resources.*

## **P. Timber Harvesting**

**1.** In a Resource Protection District abutting a great pond, timber harvesting shall be limited to the following:

**a.** Within the strip of land extending 75 feet, horizontal distance, and inland from the normal high-water line, timber harvesting may be conducted when the following conditions are met:

**i.** The ground is frozen;

**ii.** There is no resultant soil disturbance;

**iii.** The removal of trees is accomplished using a cable or boom and there is no entry of tracked or wheeled vehicles into the 75-foot strip of land;

**iv.** There is no cutting of trees less than 6 inches in diameter; no more than 30% of the trees 6 inches or more in diameter, measured at 4 ½ feet above ground level, are cut in any 10-year period; and a well-distributed stand of trees and other natural vegetation remains; and

**v.** A licensed professional forester has marked the trees to be harvested prior to a permit being issued by the municipality.

**b.** Beyond the 75 foot strip referred to in Section 15.P.1.a. above, timber harvesting is permitted in accordance with paragraph 2 below except that in no case shall the average residual basal area of trees over 4 inches in diameter at 4 1/2 feet above ground level be reduced to less than 30 square feet per acre.

**2.** Except in areas as described in Section 15.P.1. above, timber harvesting shall conform with the following provisions:

**a.** Selective cutting of no more than forty (40) percent of the total volume of trees four (4) inches or more in diameter measured at 4 1/2 feet above ground level on any lot in any ten (10) year period is permitted. In addition:

**i.** Within one-hundred (100) feet, horizontal distance, of the normal high-water line of a great pond classified GPA or a river flowing to a great pond classified GPA, and within seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies, tributary streams, or the upland edge of a wetland, there shall be no clear-cut openings and a well-distributed stand of trees and other vegetation, including existing ground cover, shall be maintained.

**ii.** At distances greater than one-hundred (100) feet, horizontal distance, of a great pond classified GPA or a river flowing to a great pond classified GPA, and greater than seventy-five (75) feet, horizontal distance, of the normal high-water line of other water bodies or the upland edge of a wetland, harvesting operations shall not create single clear cut openings greater than ten thousand (10,000) square feet in the forest canopy. Where such openings exceed five-thousand (5000) square feet they shall be at least one hundred (100) feet, horizontal distance, apart. Such clear cut openings shall be included in the calculation of total volume removal. Volume may be considered to be equivalent to basal area.

**b.** Timber harvesting operations exceeding the 40% limitation in Section 15.P.2.a. above, may be allowed by the planning board upon a clear showing, including a forest management plan signed by a Maine licensed professional forester, that such an exception is necessary for good forest management and will be carried out in accordance with the purposes of this Ordinance. The planning board shall notify the Commissioner of the Department of Environmental Protection of each exception allowed, within fourteen (14) days of the Planning Board's decision.

**c.** No accumulation of slash shall be left within fifty (50) feet, horizontal distance, of the normal high-water line of a water body. In all other areas slash shall either be removed or disposed of in such a manner that it lies on the ground and no part thereof extends more than four (4) feet above the ground. Any debris that falls below the normal high-water line of a water body or tributary stream shall be removed.

**d.** Timber harvesting equipment shall not use stream channels as travel routes except when:

**i.** Surface waters are frozen; and

**ii.** The activity will not result in any ground disturbance.

**e.** All crossings of flowing water shall require a bridge or culvert, except in areas with low banks and channel beds which are composed of gravel, rock or similar hard surface which would not be eroded or otherwise damaged.

**f.** Skid trail approaches to water crossings shall be located and designed so as to prevent water runoff from directly entering the water body or tributary stream. Upon completion of timber harvesting, temporary bridges and culverts shall be removed and areas of exposed soil revegetated.

**g.** Except for water crossings, skid trails and other sites where the operation of machinery used in timber harvesting results in the exposure of mineral soil shall be located such that an unscarified strip of vegetation of at least seventy-five (75) feet, horizontal distance, in width for slopes up to ten (10) percent shall be retained between the exposed mineral soil and the normal high-water line of a water body or upland edge of a wetland. For each ten (10) percent increase in slope, the unscarified strip shall be increased by twenty (20) feet, horizontal distance. The provisions of this paragraph apply only to a face sloping toward the water body or wetland, provided, however, that no portion of such exposed mineral soil on a back face shall be closer than twenty five (25) feet, horizontal distance, from the normal high-water line of a water body or upland edge of a wetland.

**P-1. Timber Harvesting – Statewide Standards [effective on the effective date established in Section 4.B.]**

**1.** Shoreline integrity and sedimentation: Persons conducting timber harvesting and related activities must take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of water body and tributary stream banks, water body and tributary stream channels, shorelines, and soil lying within water bodies, tributary streams and wetlands occurs, such conditions must be corrected.

**2.** Slash treatment: Timber harvesting and related activities shall be conducted such that slash or debris is not left below the normal high-water line of any water body or tributary stream, or the upland edge of a wetland. Section 15.P-1.2. does not apply to minor, incidental amounts of slash that result from timber harvesting and related activities otherwise conducted in compliance with this section.

**a.** Slash actively used to protect soil from disturbance by equipment or to stabilize exposed soil, may be left in place, provided that no part thereof extends more than 4 feet above the ground.

**b.** Adjacent to great ponds, rivers and wetlands:

**i.** No accumulation of slash shall be left within 50 feet, horizontal distance, of the normal high-water line or upland edge of a wetland; and

- ii.** Between 50 feet and 250 feet, horizontal distance, of the normal high-water line or upland edge of a wetland, all slash larger than 3 inches in diameter must be disposed of in such a manner that no part thereof extends more than 4 feet above the ground.

**3.** Timber harvesting and related activities must leave adequate tree cover and shall be conducted so that a well-distributed stand of trees is retained. This requirement may be satisfied by following one of the following three options:

**a.** Option 1 (40% volume removal), as follows:

- i.** Harvesting of no more than 40 percent of the total volume on each acre of trees 4.5 inches DBH or greater in any 10 year period is allowed. Volume may be considered to be equivalent to basal area;
- ii.** A well-distributed stand of trees which is wind firm, and other vegetation including existing ground cover, must be maintained; and,
- iii.** Within 75 feet, horizontal distance, of the normal high-water line of rivers, streams, and great ponds, and within 75 feet, horizontal distance, of the upland edge of freshwater or coastal wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of total volume removal. Volume may be considered equivalent to basal area.

**b.** Option 2 (60 square foot basal area retention), as follows:

- i.** The residual stand must contain an average basal area of at least sixty (60) square feet per acre of woody vegetation greater than or equal to 1.0 inch DBH, of which forty (40) square feet per acre must be greater than or equal to 4.5 inches DBH;
- ii.** A well-distributed stand of trees which is wind firm, and other vegetation including existing ground cover, must be maintained; and,

**iii.** Within 75 feet, horizontal distance, of the normal high-water line of water bodies and within 75 feet, horizontal distance, of the upland edge of wetlands, there must be no cleared openings. At distances greater than 75 feet, horizontal distance, of the normal high-water line of a river or great pond, or upland edge of a wetland, timber harvesting and related activities must not create single cleared openings greater than 14,000 square feet in the forest canopy. Where such openings exceed 10,000 square feet, they must be at least 100 feet, horizontal distance, apart. Such cleared openings will be included in the calculation of the average basal area. Volume may be considered equivalent to basal area.

**c.** Option 3 (Outcome based), which requires:

**i.** An alternative method proposed in an application, signed by a Licensed Forester or certified wildlife professional, submitted by the landowner or designated agent to the State of Maine Department of Conservation's Bureau of Forestry (Bureau) for review and approval, which provides equal or better protection of the shoreland area than this rule. Landowners must designate on the Forest Operations Notification form required by 12M.R.S.A. chapter 805, subchapter 5 which option they choose to use. If landowners choose Option 1 or Option 2, compliance will be determined solely on the criteria for the option chosen. If landowners choose Option 3, timber harvesting and related activities may not begin until the Bureau has approved the alternative method. The Bureau may verify that adequate tree cover and a well-distributed stand of trees is retained through a field procedure that uses sample plots that are located randomly or systematically to provide a fair representation of the harvest area.

**4.** Skid trails, yards, and equipment operation: This requirement applies to the construction, maintenance, and use of skid trails and yards in shoreland areas.

**a.** Equipment used in timber harvesting and related activities shall not use river, stream or tributary stream channels as travel routes except when surface waters are frozen and snow covered, and the activity will not result in any ground disturbance.

**b.** Skid trails and yards must be designed and constructed to prevent sediment and concentrated water runoff from entering a water body, tributary stream, or wetland. Upon termination of their use, skid trails and yards must be stabilized.

**c. Setbacks:**

**i.** Equipment must be operated to avoid the exposure of mineral soil within 25 feet, horizontal distance, of any water body, tributary stream, or wetland. On slopes of 10 percent or greater, the setback for equipment operation must be increased by 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent. Where slopes fall away from the resource, no increase in the 25-foot setback is required.

**ii.** Where such setbacks are impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

**5. Land Management Roads**

**a.** Land management roads, including approaches to crossings of water bodies, tributary stream channels, and freshwater wetlands, ditches and other related structures, must be designed, constructed, and maintained to prevent sediment and concentrated water runoff from directly entering the water body, tributary stream or wetland. Surface water on or adjacent to water crossing approaches must be diverted through vegetative filter strips to avoid sedimentation of the watercourse or wetland. Because roadside ditches may not extend to the resource being crossed, vegetative filter strips must be established in accordance with the setback requirements in Section 15.P-1.7. of this rule.

**i.** Land management roads and associated ditches, excavation, and fill must be set back at least:

**(1)** 100 feet, horizontal distance, from the normal high-water line of a great pond, river or freshwater or coastal wetland;

**(2)** 50 feet, horizontal distance, from the normal high-water line of streams; and

**(3)** 25 feet, horizontal distance, from the normal high-water line of tributary streams

**ii.** The minimum 100 foot setback specified in Section 15.P-1.5.a.i. above may be reduced to no less than 50 feet, horizontal distance, and the 50 foot setback specified in Section 15.P-1.5.a.ii. above may be reduced to no less than 25 feet, horizontal distance, if, prior to construction, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

**iii.** On slopes of 10 percent or greater, the land management road setback must be increased by at least 20 feet, horizontal distance, plus an additional 10 feet, horizontal distance, for each 5 percent increase in slope above 10 percent.

**iv.** New land management roads are not allowed within the shoreland area along Significant River Segments as identified in 38 M.R.S.A. section 437, nor in a Resource Protection District, unless, prior to construction, the landowner or the landowner's designated agent makes a clear demonstration to the Planning Board's satisfaction that no reasonable alternative route exists outside the shoreland zone, and that the new road must be set back as far as practicable from the normal high-water line and screened from the river by existing vegetation.

**v.** Ditches, culverts, bridges, dips, water turnouts and other water control installations associated with roads must be maintained on a regular basis to assure effective functioning. Drainage structures shall deliver a dispersed flow of water into an unscarified filter strip no less than the width indicated in the setback requirements in Section 15.P-1.7. Where such a filter strip is impracticable, appropriate techniques shall be used to avoid sedimentation of the water body, tributary stream, or wetland. Such techniques may include the installation of sump holes or settling basins, and/or the effective use of additional ditch relief culverts and ditch water turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.



**vi. Road closeout and discontinuance.** Maintenance of the water control installations required in Section 15.P-1.5.e. must continue until use of the road is discontinued and the road is put to bed by effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to avoid surface water flowing over or under the water bar, and extending a sufficient distance beyond the traveled way so that water does not reenter the road surface.

**vii. Upgrading existing roads.** Extension or enlargement of presently existing roads must conform to the provisions of Section 15.P-1. Any non-conforming existing road may continue to exist and to be maintained, as long as the nonconforming conditions are not made more non-conforming.

**viii. Exception.** Extension or enlargement of presently existing roads need not conform to the setback requirements of Section 15.P-1.5.a. if, prior to extension or enlargement, the landowner or the landowner's designated agent demonstrates to the Planning Board's satisfaction that no reasonable alternative exists and that appropriate techniques will be used to prevent sedimentation of the water body, tributary stream, or wetland. Such techniques may include, but are not limited to, the installation of settling basins, and/or the effective use of additional ditch relief culverts and turnouts placed to avoid sedimentation of the water body, tributary stream, or wetland. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

**ix. Additional measures.** In addition to the foregoing minimum requirements, persons undertaking construction and maintenance of roads and river, stream and tributary stream crossings must take reasonable measures to avoid sedimentation of surface waters.

**6. Crossings of water bodies:** Crossings of rivers, streams, and tributary streams must allow for fish passage at all times of the year, must not impound water, and must allow for the maintenance of normal flows.

**a. Determination of flow.** Provided they are properly applied and used for the circumstances for which they are designed, methods including but not limited to the following are acceptable as a means of calculating the 10 year and 25 year frequency water flows and thereby determining water crossing sizes as required in Section 15.P-1: The United States Geological Survey (USGS) Methods; specifically: Hodgkins, G. 1999. Estimating the Magnitude of Peak Flows for Streams in Maine for Selected Recurrence Intervals. U.S. Geological Survey. Water Resources Investigations Report 99-4008. 45 pp.

**b. Upgrading existing water crossings.** Extension or enlargement of presently existing water crossings must conform to the provisions of Section 15.P-1. Any nonconforming existing water crossing may continue to exist and be maintained, as long as the nonconforming conditions are not made more nonconforming; however, any maintenance or repair work done below the normal high-water line must conform to the provisions of Section 15.P-1.

**c. Other Agency Permits.** Any timber harvesting and related activities involving the design, construction, and maintenance of crossings on water bodies other than a river, stream or tributary stream may require a permit from the Land Use Regulation Commission, the Department of Environmental Protection, or the US Army Corps of Engineers.

**d. Any timber harvesting and related activities involving the design, construction, and maintenance of crossings of freshwater wetlands identified by the Department of Inland Fisheries and Wildlife as essential wildlife habitat require prior consultation with the Department of Inland Fisheries and Wildlife.**

**e. Notice to Bureau of Forestry.** Written notice of all water crossing construction maintenance, alteration and replacement activities in shoreland areas must be given to the Bureau prior to the commencement of such activities. Such notice must contain all information required by the Bureau, including:

- i. A map showing the location of all proposed permanent crossings;**
- ii. The GPS location of all proposed permanent crossings;**
- iii. For any temporary or permanent crossing that requires a permit from state or federal agencies, a copy of the approved permit or permits; and**
- iv. A statement signed by the responsible party that all temporary and permanent crossings will be constructed, maintained, and closed out in accordance with the requirements of this Section.**

**f. Water crossing standards.** All crossings of rivers require a bridge or culvert sized according to the requirements of Section 15.P-1.6.g. below. Streams and tributary streams may be crossed using temporary structures that are not bridges or culverts provided:

- i. Concentrated water runoff does not enter the stream or tributary stream;**
- ii. Sedimentation of surface waters is reasonably avoided;**
- iii. There is no substantial disturbance of the bank, or stream or tributary stream channel;**

**iv.** Fish passage is not impeded; and,

**v.** Water flow is not unreasonably impeded. Subject to Section 15.P-1.6.f. iv. above, skid trail crossings of streams and tributary streams when channels of such streams and tributary streams are frozen and snow-covered or are composed of a hard surface which will not be eroded or otherwise damaged are not required to use permanent or temporary structures.

**g.** Bridge and Culvert Sizing. For crossings of river, stream and tributary stream channels with a bridge or culvert, the following requirements apply:

**i.** Bridges and culverts must be installed and maintained to provide an opening sufficient in size and structure to accommodate 10 year frequency water flows or with a cross sectional area at least equal to 2 1/2 times the cross-sectional area of the river, stream, or tributary stream channel.

**ii.** Temporary bridge and culvert sizes may be smaller than provided in Section 15.P-1.6. g.i. if techniques are effectively employed such that in the event of culvert or bridge failure, the natural course of water flow is maintained and sedimentation of the water body or tributary stream is avoided. Such crossing structures must be at least as wide as the channel and placed above the normal high-water line. Techniques may include, but are not limited to, the effective use of any, a combination of, or all of the following:

**(A)** Use of temporary skidder bridges;

**(B)** Removing culverts prior to the onset of frozen ground conditions;

**(C)** Using water bars in conjunction with culverts;

**(D)** Using road dips in conjunction with culverts.

**iii.** Culverts utilized in river, stream and tributary stream crossings must:

**(A)** Be installed at or below river, stream or tributary stream bed elevation;

**(B)** Be seated on firm ground;

**(C)** Have soil compacted at least halfway up the side of the culvert;

**(D)** Be covered by soil to a minimum depth of 1 foot or according to the culvert manufacturer's specifications, whichever is greater; and

**(E)** Has a headwall at the inlet end which is adequately stabilized by riprap or other suitable means to reasonably avoid erosion of material around the culvert.

**iv.** River, stream and tributary stream crossings allowed under Section 15.P-1. but located in flood hazard areas (i.e. A zones) as identified on a community's Flood Insurance Rate Maps (FIRM) or Flood Hazard Boundary Maps (FHBM), must be designed and constructed under the stricter standards contained in that community's National Flood Insurance Program (NFIP). For example, a water crossing may be required to pass a 100- year flood event.

**v.** Exception. Skid trail crossings of tributary streams within shoreland areas and wetlands adjacent to such streams may be undertaken in a manner not in conformity with the requirements of the foregoing subsections provided persons conducting such activities take reasonable measures to avoid the disruption of shoreline integrity, the occurrence of sedimentation of water, and the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands. If, despite such precautions, the disruption of shoreline integrity, sedimentation of water, or the disturbance of stream banks, stream channels, shorelines, and soil lying within ponds and wetlands occurs, such conditions must be corrected.

**h.** Skid trail closeout. Upon completion of timber harvesting and related activities, or upon the expiration of a Forest Operations Notification, whichever is earlier, the following requirements apply:

**i.** Bridges and culverts installed for river, stream and tributary stream crossings by skid trails must either be removed and areas of exposed soil stabilized, or upgraded to comply with the closeout standards for land management roads in Section 15.P-1.6.i. below.

**ii.** Water crossing structures that are not bridges or culverts must either be removed immediately following timber harvesting and related activities, or, if frozen into the river, stream or tributary stream bed or bank, as soon as practical after snowmelt.

**iii.** River, stream and tributary stream channels, banks and approaches to crossings of water bodies and tributary streams must be immediately stabilized on completion of harvest, or if the ground is frozen and/or snow-covered, as soon as practical after snowmelt. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

**i.** Land management road closeout. Maintenance of the water control features must continue until use of the road is discontinued and the road is put to bed by taking the following actions:

**i.** Effective installation of water bars or other adequate road drainage structures at appropriate intervals, constructed to reasonably avoid surface water flowing over or under the water bar, and extending sufficient distance beyond the traveled way so that water does not reenter the road surface.

**ii.** Water crossing structures must be appropriately sized or dismantled and removed in a manner that reasonably avoids sedimentation of the water body or tributary stream.

**iii.** Any bridge or water crossing culvert in roads to be discontinued shall satisfy one of the following requirements:

**(A)** It shall be designed to provide an opening sufficient in size and structure to accommodate 25 year frequency water flows;

**(B)** It shall be designed to provide an opening with a cross-sectional area at least 3 ½ times the cross-sectional area of the river, stream or tributary stream channel; or

**(C)** It shall be dismantled and removed in a fashion to reasonably avoid sedimentation of the river, stream or tributary stream. If, despite such precautions, sedimentation or the disruption of shoreline integrity occurs, such conditions must be corrected.

7. Slope Table: Filter strips, skid trail setbacks, and land management road setbacks must be maintained as specified in Section 15.P-1. but in no case shall be less than shown in the following table.

<b>Average slope of land between exposed mineral soil and shoreline (percent)</b>	<b>Width of strip between exposed mineral soil and shoreline (feet along surface of the ground)</b>
0	25
10	45
20	65
30	85
40	105
50	125
60	145
70	165

#### **Q. Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting**

1. In a Resource Protection District abutting a great pond, there shall be no cutting of vegetation within the strip of land extending 75 feet, horizontal distance, and inland from the normal high-water line, except to remove safety hazards. Elsewhere, in any Resource Protection District the cutting or removal of vegetation shall be limited to that which is necessary for uses expressly authorized in that district.

2. Except in areas as described in Section Q.1. above, and except to allow for the development of permitted uses, within a strip of land extending one-hundred (100) feet, horizontal distance, inland from the normal high-water line of a great pond classified GPA or a river flowing to a great pond, and seventy-five (75) feet, horizontal distance, from any other water body, tributary stream, or the upland edge of a wetland, a buffer strip of vegetation shall be preserved as follows:

a. There shall be no cleared opening greater than 250 square feet in the forest canopy (or other existing woody vegetation if a forested canopy is not present) as measured from the outer limits of the tree or shrub crown. However, a footpath not to exceed six (6) feet in width as measured between tree trunks and/or shrub stems is allowed provided that a cleared line of sight to the water through the buffer strip is not created. Such footpath shall be designed to minimize erosion.

b. Selective cutting of trees within the buffer strip is allowed provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of Section 15.Q.2.b.a. "well distributed stand of trees" adjacent to a great pond classified GPA or a river or stream flowing to a great pond classified GPA, shall be defined as maintaining a rating score of 24 or more in each 25-foot by 50-foot rectangular (1250 square feet) area as determined by the following rating system.

<b>Diameter of Tree at 4-1/2 feet above ground level (in inches)</b>	<b>Points</b>
2 to less than 4	1
4 to less than 8	2
8 to less than 12	3
12 or greater	8

- a.** Adjacent to other water bodies, tributary streams, and wetlands, a “well-distributed stand of trees” is defined as maintaining a minimum rating score of 16 per 25-foot by 50-foot rectangular area.

*NOTE: As an example, adjacent to a great pond, if a 25-foot x 50-foot plot contains four (4) trees between 2 and 4 inches in diameter, two trees between 4 and 8 inches in diameter, three trees between 8 and 12 inches in diameter, and two trees over 12 inches in diameter, the rating score is: (4x1) + (2x2) + (3x3) + (2x8) = 36 points. Thus, the 25-foot by 50-foot plot contains trees worth 36 points. Trees totaling 12 points (36- 24 = 12) may be removed from the plot provided that no cleared openings are created.*

- ii.** The following shall govern in applying this point system:

- (1)** The 25-foot by 50-foot rectangular plots must be established where the landowner or lessee proposes clearing within the required buffer;
- (2)** Each successive plot must be adjacent to, but not overlap a previous plot;
- (3)** Any plot not containing the required points must have no vegetation removed except as otherwise allowed by this Ordinance;
- (4)** Any plot containing the required points may have vegetation removed down to the minimum points required or as otherwise allowed by this Ordinance;
- (5)** Where conditions permit, no more than 50% of the points on any 25-foot by 50-foot rectangular area may consist of trees greater than 12 inches in diameter.

**c.** For the purposes of Section 15.Q.2.b. “other natural vegetation” is defined as retaining existing vegetation under three (3) feet in height and other ground cover and retaining at least five (5) saplings less than two (2) inches in diameter at four and one half (4 ½) feet above ground level for each 25-foot by 50-foot rectangle area. If five saplings do not exist, no woody stems less than two (2) inches in diameter can be removed until 5 saplings have been recruited into the plot.

**d.** Notwithstanding the above provisions, no more than 40% of the total volume of trees four (4) inches or more in diameter, measured at 4 1/2 feet above ground level may be removed in any ten (10) year period.

e. In order to protect water quality and wildlife habitat, existing vegetation under three (3) feet in height and other ground cover, including leaf litter and the forest duff layer, shall not be cut, covered, or removed, except to provide for a footpath or other permitted uses as described in Section 15.Q. paragraphs 2. and 2.a. above.

f. Pruning of tree branches, on the bottom 1/3 of the tree is allowed.

g. In order to maintain a buffer strip of vegetation, when the removal of storm-damaged, diseased, unsafe, or dead trees results in the creation of cleared openings, these openings shall be replanted with native tree species unless existing new tree growth is present.

h. Section 15.Q.2. does not apply to those portions of public recreational facilities adjacent to public swimming areas as long as cleared areas, are limited to the minimum area necessary.

3. At distances greater than one hundred (100) feet, horizontal distance, from a great pond classified GPA or a river flowing to a great pond classified GPA, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any other water body, tributary stream, or the upland edge of a wetland there shall be allowed on any lot, in any ten (10) year period, selective cutting of not more than forty (40) percent of the volume of trees four (4) inches or more in diameter, as measured 4 1/2 feet above ground level. Tree removal in conjunction with the development of permitted uses shall be included in the forty (40) percent calculation. For the purposes of these standards volume may be considered to be equivalent to basal area.

4. In no event shall cleared openings for any purpose, including but not limited to, principal and accessory structures, driveways, lawns and sewage disposal areas, exceed in the aggregate, 25% of the lot area within the shoreland zone or ten thousand (10,000) square feet, whichever is greater, including land previously cleared. Individual clearings shall not exceed ten thousand (10,000) square feet; if two (2) or more openings are created they shall be separated by a minimum of one hundred (100) feet, horizontal distance. This provision shall not apply to the General Development or Village Districts.

5. Legally existing nonconforming cleared openings may be maintained, but shall not be enlarged, except as allowed by this Ordinance.

6. Fields and other cleared openings which have reverted to primarily shrubs, trees, or other woody vegetation shall be regulated under the provisions of Section 15.Q.

## **R. Erosion and Sedimentation Control**

1. All activities which involve filling, grading, excavation or other similar activities which result in unstabilized soil conditions and which require a permit shall also require a written soil erosion and sedimentation control plan. The plan shall be submitted to the permitting authority for approval and shall include, where applicable, provisions for:



- a.** Mulching and revegetation of disturbed soil.
  - b.** Temporary runoff control features such as hay bales, silt fencing or diversion ditches.
  - c.** Permanent stabilization structures such as retaining walls or rip-rap.
- 2.** In order to create the least potential for erosion, development shall be designed to fit with the topography and soils of the site. Areas of steep slopes where high cuts and fills may be required shall be avoided wherever possible, and natural contours shall be followed as closely as possible.
- 3.** Erosion and sedimentation control measures shall be equal to or exceed all DEP approved methods and apply to all aspects of the proposed project involving land disturbance, and shall be in operation during all stages of the activity. The amount of exposed soil at every phase of construction shall be minimized to reduce the potential for erosion.
- 4.** Any exposed ground area shall be temporarily or permanently stabilized within one (1) week from the time it was last actively worked, by use of riprap, sod, seed, and mulch, or other effective measures. In all cases permanent stabilization shall occur within nine (9) months of the initial date of exposure. In addition:
  - a.** Where mulch is used, it shall be applied at a rate of at least one (1) bale per five hundred (500) square feet and shall be maintained until a catch of vegetation is established.
  - b.** Anchoring the mulch with netting, peg and twine or other suitable method may be required to maintain the mulch cover.
  - c.** Additional measures shall be taken where necessary in order to avoid siltation into the water. Such measures may include the use of staked hay bales and/or silt fences.
- 5.** Natural and man-made drainage ways and drainage outlets shall be protected from erosion from water flowing through them. Drainage ways shall be designed and constructed in order to carry water from a twenty five (25) year storm or greater, and shall be stabilized with vegetation or lined with rip rap.

## **S. Soils**

1. All land uses shall be located on soils in or upon which the proposed uses or structures can be established or maintained without causing adverse environmental impacts, including severe erosion, mass soil movement, improper drainage, and water pollution, whether during or after construction. Proposed uses requiring subsurface waste disposal, and commercial or industrial development and other similar intensive land uses shall require a soils report based on an on-site investigation and be prepared by state-certified professionals. Certified persons may include Maine Certified Soil Scientists, Maine Registered Professional Engineers, Maine State Certified Geologists and other persons who have training and experience in the recognition and evaluation of soil properties. The report shall be based upon the analysis of the characteristics of the soil and surrounding conditions, and other pertinent data which the evaluator deems appropriate. The soils report shall include recommendations for a proposed use to counteract soil limitations where they exist.

## **T. Water Quality**

1. No activity shall deposit on or into the ground or discharge to the waters of the State any pollutant that, by itself or in combination with other activities or substances, will impair designated uses or the water classification of the water body, tributary stream or wetland.

2. Overboard discharge from sewage disposal systems, wherein sewage or any part thereof, chlorinated or otherwise, is discharged directly into surface waters, is prohibited, excepting that systems installed prior to the passage of this Ordinance may continue as long as they are in compliance with all State water pollution and plumbing laws and regulations. No expansion, renovation or change in use shall be allowed that results in an increase in the overboard discharge of sewage.

3. Privies and other waste water systems may be permitted as approved by the State Waste Water Disposal Rules.

## **U. Archaeological Sites**

1. Any proposed land use activity involving structural development or soil disturbance on or adjacent to sites listed on, or eligible to be listed on the National Register of Historic Places or other mapped historic or prehistoric places determined by the permitting authority shall be submitted by the applicant to the Maine Historic Preservation Commission for review and comment, at least twenty (20) days prior to action being taken by the permitting authority. The permitting authority shall consider comments received from the Commission prior to rendering a decision on the application.

## **Section 16. General Building Requirements**

### **A. Permits Required**

1. It shall be unlawful to construct, add to, alter or to commence the construction, addition, or alteration of a building, mobile home or structure where the value of such construction or addition exceeds \$1,000 without first filing with the Codes Enforcement Officer an application in writing and obtaining a permit therefor, which will be posted in a visible, public location.

2. The \$1,000 exemption from the need to have a building permit shall not apply to the construction of a foundation or slab for a dwelling unit. No work shall be done on a foundation for a house, mobile home slab, cottage or other dwelling unit until the Codes Enforcement Officer has reviewed the site for compliance with the provisions of this Ordinance and issued a permit.

3. All applications shall be accompanied by a fee in accordance with the following estimated value of construction schedule:

\$1,000 to \$5,000	\$20
\$5,001 to \$10,000	\$40
\$10,001 to \$100,000	\$40 plus \$1.50 per \$1,000
\$100,001 to \$200,000	\$40 plus \$2.50 per \$1,000
\$200,001 and over	\$40 plus \$3.50 per \$1,000

If the estimated value of the project is deemed unreasonable by the CEO, the CEO has the right to assess a renovation at seventy five (75.00) dollars per square foot and new construction at one hundred twenty five (125.00) dollars per square foot. The fee for construction commenced before a permit is issued shall be twice the normal fee.

4. Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire. A one (1) year extension may be granted by the permitting authority.

5. If the proposed use will require the installation or expansion of a subsurface wastewater disposal system, a valid permit from the LPI shall be required.

6. No permit shall be issued for additional bedrooms or uses until the applicant demonstrates that the waste water system is lawful for both the existing structure and the proposed changes.

7. All modifications to existing structures or change of use shall be in conformity with all provisions of this Ordinance, the Maine State Plumbing Code and Subsurface Waste Water Disposal Rules. No permit shall be issued for activities prohibited by this Ordinance or other Town or State codes, laws and ordinances.

## **B. Construction Standards**

- 1.** All dwellings and mobile homes shall be erected on solid ledge or foundation walls not less than seven inches thick and carried not less than 12 inches below the frost line, or upon a concrete slab not less than six inches thick, or upon pressure treated or concrete posts that extend to solid ledge or to at least four feet into the earth.
- 2.** All construction and materials shall conform to generally accepted standards of good practice and shall conform to all applicable state laws and Town regulations and Ordinances.
- 3.** New dwelling construction and renovations shall conform to the following standards:
  - a.** Smoke alarms shall be installed as follows:
    - i.** At least one in each sleeping room
    - ii.** At least one outside each separate sleeping area in the immediate vicinity of the bedrooms.
    - iii.** At least one on each additional story of the dwelling, including basements but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.
    - iv.** When more than one smoke alarm is required to be installed within an individual dwelling unit the alarm devices shall be interconnected in such a manner that the actuation of one alarm will activate all of the alarms in the individual unit. The alarm shall be clearly audible in all bedrooms over background noise levels with all intervening doors closed.
    - v.** All smoke alarms shall be listed and installed in accordance with the provisions of the State Building Codes and the household fire equipment provisions of NFPA 72.
  - b.** There shall be two (2) inches or more clearance between combustible materials and masonry chimneys.
  - c.** All masonry chimneys shall be lined.
  - d.** All hallways shall have a minimum finished width of thirty-six (36) inches.

**e.** Dwelling units shall have a minimum of two (2) exterior doors and each shall have a minimum finished cleared opening of thirty-four (34) inches.

**f.** Walls and doors between attached garages and living spaces must be built of fire shield material with a one (1) hour rating.

**g.** Multi-family structures shall contain no more than ten (10) dwelling units. Such units shall be separated by fire shield material with a one (1) hour rating and be connected to common water and waste water systems. Structures containing three (3) or more units are subject to Subdivision review.

**h.** No building shall exceed 35 feet in height, measured from the mean original grade at the downhill side of the building.

**i.** All building shall conform to Title 10 Chapter 1101, Maine Model Building Code (IBC 2003 or IRC 2003) as amended.

### **C. Solar Access**

**1.** No new structure or addition shall be built that casts a shadow on south-facing windows or other solar collecting devices on neighboring properties on December 22nd unless the owners of such devices and windows shall agree in writing that they do not object to such shading. Neither shall any new vegetation be allowed to grow so as to cast such a shadow without the owner of a solar device agreeing. Any tree, shrub or any planted landscaping growing at the time of the construction or installation of the solar device may be allowed to remain and grow out its natural life.

### **D. Mobile Homes**

**1.** Mobile homes shall be allowed on any lot of land where a single family home would be allowed, but no mobile home may be moved into the Town or moved onto a lot within the Town before plumbing and building permits have been issued. No permits shall be issued unless that owner provides evidence demonstrating that the mobile home meets the standards of the National Manufactured Housing Construction and Safety Standards Act of 1974, U. S. Code, Title 42, Section 5401 et seq.

### **E. Debris from Destroyed Buildings**

**1.** Debris and waste from buildings destroyed by fire, deterioration, accident, storms or flooding shall be removed by the owners within six months of being notified to do so by the Codes Enforcement Officer.

## **F. Structure Demolition or Removal Notice**

1. Property owners and contractors shall notify the Codes Enforcement Officer before the demolition of any structure can take place. The Codes Enforcement Officer will, in turn, notify the Phippsburg Historical Preservation Commission who will determine whether that structure is associated with events that have made a significant contribution to the broad patterns of our history; or that is associated with the lives of persons significant in our past, or embodies the distinctive characteristics of a type, period, or method of construction, or that represents the work of a master, or that possesses high artistic values, or that have yielded, or may be likely to yield, information important in prehistory or history (National Historic Register of Historic Places.) If the structure is deemed not to be of historical significance, the Phippsburg Historical Preservation Commission will notify the Codes Enforcement Officer that the demolition delay should be withdrawn. This determination will be made as soon as possible, but no later than 45 days after Commission notification from the Code Enforcement officer. If the property is deemed to be of significant historical value, the Phippsburg Historical Preservation Commission will negotiate with the owner or contractor for permission to move the structure or negotiate/seek a suitable alternative for the structure.

## **G. Occupancy Permit**

1. No structure shall be used for the first time in Phippsburg for residential purposes until a permit is issued by the Codes Enforcement Officer.
2. No permit shall be issued for occupancy of a residential structure until the plumbing inspector certifies that the dwelling has sanitary facilities installed and operating that meet all the requirements of the State Plumbing Code.
3. Structures that have not been used for residential purposes for more than five (5) years shall be considered new residential structures and shall require an occupancy permit.
4. The penalty for occupying a structure without first receiving a certificate of occupancy shall be \$20.00 per day.

## **Section 17. Administration**

### **A. Administering Bodies and Agents**

1. Code Enforcement Officer: A Code Enforcement Officer shall be appointed or reappointed annually by July 1st. The person so named shall also be qualified and fulfill all duties of a Licensed Plumbing Inspector.
2. Board of Appeals: A Board of Appeals shall be created in accordance with the provisions of 30-A M.R.S.A. section 2691.
3. Planning Board: A Planning Board shall be created in accordance with the provisions of State law.

### **B. Permits Required**

1. After the effective date of this Ordinance no person shall, without first obtaining a permit from the Codes Enforcement Officer or Planning Board, as appropriate, engage in any activity or use of land or structure requiring a permit in the district in which such activity or use would occur; or expand, change, or replace an existing use or structure; or renew a discontinued nonconforming use. A person who is issued a permit pursuant to this Ordinance shall have a copy of the permit on site while the work authorized by the permit is performed.
2. A permit is not required for the replacement of an existing road culvert as long as:
  - a. The replacement culvert is not more than 25% longer than the culvert being replaced;
  - b. The replacement culvert is not longer than 75 feet; and
  - c. Adequate erosion control measures are taken to prevent sedimentation of the water, and the crossing does not block fish passage in the water course.
3. A permit is not required for an archaeological excavation as long as the excavation is conducted by an archaeologist listed on the State Historic Preservation Officer's level 1 or level 2 approved lists, and unreasonable erosion and sedimentation is prevented by means of adequate and timely temporary and permanent stabilization measures. Prior to excavation, a copy of documentation showing size and scope shall be provided to the Codes Enforcement Officer.
4. Any permit required by this Ordinance shall be in addition to any other permit required by other law or ordinance.
5. A curb cut permit is required from Maine Department of Transportation (MDOT) for all State roads and from the Road Commissioner for Town maintained roads.

### **C. Permit Application**

1. Every applicant for a permit shall submit on a form provided by the Town a written application to the appropriate official as indicated in Section 14. Building permit applications shall include a scaled site plan and or blueprints not to exceed 11x17 or in digital format.
2. All applications shall be signed by an owner or individual who can show evidence of right, title or interest in the property or by an agent, representative, tenant, or contractor of the owner with authorization from the owner to apply for a permit hereunder, certifying that the information in the application is complete and correct.
3. All applications shall be dated, and the Code Enforcement Officer or Planning Board, as appropriate, shall note upon each application the date and time of its receipt.
4. If the property is not served by a public sewer, a valid plumbing permit or a completed application for a plumbing permit, including the site evaluation approved by the Plumbing Inspector, shall be submitted whenever the nature of the proposed structure or use would require the installation of a subsurface sewage disposal system.

### **D. Procedure for Administering Permits.**

1. Within 35 days of the date of receiving a written application, the Planning Board or Codes Enforcement Officer, as indicated in Section 14, shall notify the applicant in writing either that the application is a complete application, or, if the application is incomplete, that specified additional material is needed to make the application complete. The Planning Board or the Code Enforcement Officer, as appropriate, shall approve, approve with conditions, or deny all permit applications in writing within 35 days of receiving a completed application. However, if the Planning Board has a waiting list of applications, a decision on the application shall occur within 35 days after the first available date on the Planning Board's agenda following receipt of the completed application, or within 35 days of the public hearing, if the proposed use or structure is found to be in conformance with the purposes and provisions of this Ordinance.
2. The applicant shall have the burden of proving that the proposed land use activity is in conformity with the purposes and provisions of this Ordinance.
3. After the submission of a complete application to the Planning Board, the Board shall approve an application or approve it with conditions if it makes a positive finding based on the information presented that the proposed use:
  - a. Will maintain safe and healthful conditions;
  - b. Will not result in water pollution, erosion, or sedimentation to surface waters;
  - c. Will adequately provide for the disposal of all wastewater;



- d.** Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
- e.** Will conserve shore cover and visual, as well as actual, points of access to inland and coastal waters;
- f.** Will protect archaeological and historic resources as designated in the comprehensive plan;
- g.** Will not adversely affect existing commercial fishing or maritime activities.
- h.** Will avoid problems associated with flood plain development and use; and
- i.** Is in conformance with the provisions of Section 15, Land Use Standards.

**4.** If a permit is either denied or approved with conditions, the reasons as well as conditions shall be stated in writing. No approval shall be granted for an application involving a structure if the structure would be located in an unapproved subdivision or would violate any other local ordinance, or regulation or statute administered by the municipality.

#### **E. Special Exceptions.**

**1.** In addition to the criteria specified in Section 17.D. above, excepting structure setback requirements, the Planning Board may approve a permit for a single family residential structure in a Resource Protection District and General Development District provided that the applicant demonstrates that all of the following conditions are met:

- a.** There is no location on the property, other than a location within the Resource Protection District or General Development District, where the structure can be built.
- b.** The lot on which the structure is proposed is undeveloped and was established and recorded in the registry of deeds of the county in which the lot is located before the adoption of the Resource Protection District or General Development District.(for the purposes of this section lots abutting the freshwater wetlands labeled as IWWH on the official shoreland zoning map revised May 2009 will have a starting date of July 1, 2009 all other lots shall have a starting date of January 1, 1989).
- c.** All proposed buildings, sewage disposal systems and other improvements are:
  - i.** Located on natural ground slopes of less than 20%; and

ii. Located outside the floodway of the 100-year flood-plain along rivers and artificially formed great ponds along rivers and outside the velocity zone in areas subject to tides, based on detailed flood insurance studies and as delineated on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps; all buildings, including basements, are elevated at least one foot above the 100- year flood-plain elevation; and the development is otherwise in compliance with any applicable municipal flood-plain ordinance. If the floodway is not shown on the Federal Emergency Management Agency Maps, it is deemed to be 1/2 the width of the 100-year flood-plain.

d. The total ground-floor area, including cantilevered or similar overhanging extensions, of all principal and accessory structures is limited to a maximum of 1,500 square feet. This limitation shall not be altered by variance.

e. All structures, except functionally water-dependent structures, are set back from the normal high-water line of a water body, tributary stream or upland edge of a wetland to the greatest practical extent, but not less than 75 feet, horizontal distance and 100 feet the from upland edge of a freshwater wetland. In determining the greatest practical extent, the Planning Board shall consider the depth of the lot, the slope of the land, the potential for soil erosion, the type and amount of vegetation to be removed, the proposed building site's elevation in regard to the flood-plain, and its proximity to moderate value and high-value wetlands.

#### **F. Expiration of Permit**

1. Permits shall expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that one year. If a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire. An additional extension may be granted by the permitting authority, at no fee, if the site is permanently revegetated.

#### **G. Installation of Public Utility Service**

1. A public utility, water district, sanitary district or any utility company of any kind may not install services to any new structure located in the shoreland zone unless written authorization attesting to the validity and currency of all local permits required under this or any previous Ordinance has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officials and the utility.

## **H. Appeals**

1. The Board of Appeals shall have powers and duties granted in the current “Board of Appeals Ordinance.”

## **I. Enforcement**

1. Nuisances. Any violation of this Ordinance shall be deemed to be a nuisance.
2. Code Enforcement Officer
  - a. It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it, including discontinuance of illegal use of land, buildings or structures, or work being done, removal of illegal buildings or structures, and abatement of nuisance conditions. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.
  - b. The Code Enforcement Officer shall conduct on-site inspections to ensure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance.
  - c. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected. On a biennial basis, a summary of this record shall be submitted to the Director of the Bureau of Land and Water Quality within the Department of Environmental Protection.

**3. Legal Actions.** When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage. Penalties for violation of Section 15.Q. shall include fines, replanting and landscaping

**4. Fines.** Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. section 4452. All fines levied under this Ordinance shall be paid to the Town of Phippsburg.

## **Section 18. Definitions**

- A. In this Ordinance the word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual; the present tense includes the future tense; the singular number includes the plural, and the plural includes the singular; the word "shall" is mandatory, and the word "may" is permissive; the word "lot" includes the words "plot" or "parcel." In case of a difference of meaning or implication between the text of this Ordinance and any map or illustration, the text shall control.
- B. Terms not defined shall have the customary dictionary meaning, found in Randall House Webster's Dictionary 2<sup>nd</sup> Edition, copyright 2001 by Randall Publishing, Inc., located in the Phippsburg Town Hall. The following definitions apply:

**Abutter** - A person who owns adjacent property and including property directly across any road.

**Accessory Structure or Use** - A use or structure which is incidental and subordinate to the principal use or structure. Accessory uses, when aggregated shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure. A separate accessory structure shall not be less than eight (8) feet from the primary structure.

**Aggrieved party** - An owner of land whose property is directly or indirectly affected by the granting or denial of a permit or variance under this Ordinance; a person whose land abuts land for which a permit or variance has been granted; or any other person or group of persons who have suffered particularized injury as a result of the granting or denial of such permit or variance.

**Agriculture** - The production, keeping or maintenance for sale or lease, of plants and/or animals, including but not limited to: forages and sod crops; grains and seed crops; dairy animals and dairy products; poultry and poultry products; livestock; fruits and vegetables; and ornamental and greenhouse products. Agriculture does not include forest management and timber harvesting activities.

**Aquaculture** - The growing or propagation of harvestable freshwater, estuarine, or marine plant or animal species.

**Alteration** - Any change, addition, or modification in construction, or change in the structural members of a building, such as bearing walls, columns, beams or girders.

**Basal Area** - The area of cross-section of a tree stem at 4 1/2 feet above ground level and inclusive of bark.  $(3.1416 \times \text{DBH}^2) / (4 \times 144)$

**Basement** - Any portion of a structure with a floor-to-ceiling height of 6 feet or more and having more than 50% of its volume below the existing ground level.

**Boat Launching Facility** - A facility designed primarily for the launching and landing of watercraft, and which may include an access ramp, docking area, and parking spaces for vehicles and trailers.

**Building** - See Structures

**Building Height** - The vertical distance between the mean original grade at the downhill side of the building and the highest point of the building, excluding chimneys, steeples, antennas, and similar appurtenances which have no floor area. Where retaining walls are required to be constructed within 20 feet of a building, the wall shall be considered to be part of the building and the height of the building shall be measured from the lowest finished grade level adjoining the wall.

**Bureau** - State of Maine Department of Conservation's Bureau of Forestry

**Camper** - A portable structure designed to be used as a temporary dwelling for travel and designed to fit upon or in the back of a truck, including converted buses or other vehicles. This structure shall not be used as a permanent dwelling.

**Campground** - Any area or tract of land to accommodate two (2) or more parties in temporary living quarters including, but not limited to, tents, recreational vehicles or other shelters, for which a fee is charged.

**Canopy** - The more or less continuous cover formed by tree crowns in a wooded area.

**Coastal Wetland** - All tidal and sub tidal lands; all lands with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat or other contiguous low land which is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes. *NOTE: All areas below the maximum spring tide level are coastal wetlands. These areas may consist of rocky ledges, sand and cobble beaches, mud flats, etc., in addition to salt marshes and salt meadows.*

**Codes Enforcement Officer** - A person appointed by the Selectmen to administer and enforce this Ordinance. Reference to the Codes Enforcement Officer shall be construed to include the Building Inspector and Plumbing Inspector, where applicable.

**Commercial use** - The use of land, buildings, or structures, the intent of which is the production of income. This includes the rental of a residential dwelling unit.

**Complete Application** - All documentation necessary for review and decision by the permitting authority.

**Conforming Use** - A use of buildings, structures or land which complies with all the applicable provisions of this Ordinance.

**Cross-sectional area** - The cross-sectional area of a stream or tributary stream channel is determined by multiplying the stream or tributary stream channel width by the average

stream or tributary stream channel depth. The stream or tributary stream channel width is the straight line distance from the normal high-water line on one side of the channel to the normal high-water line on the opposite side of the channel. The average stream or tributary stream channel depth is the average of the vertical distances from a straight line between the normal high-water lines of the stream or tributary stream channel to the bottom of the channel.

**DBH** - The diameter of a standing tree measured 4 1/2 feet from ground level.

**Development** - A change in land use involving alteration of the land, water or vegetation, or the addition or alteration of structures or other construction not naturally occurring.

**Dimensional requirements** - Numerical standards relating to spatial relationships including but not limited to setback, lot area, shore frontage and height.

**Disability** - A physical or mental condition of a person which constitutes a substantial handicap as determined by a physician or in the case of mental handicap, by a psychiatrist or psychologist.

**Disruption of shoreline integrity** - The alteration of the physical shape, properties, or condition of a shoreline at any location by timber harvesting and related activities. A shoreline where shoreline integrity has been disrupted is recognized by compacted, scarified and/or rutted soil, an abnormal channel or shoreline cross-section, and in the case of flowing waters, a profile and character altered from natural conditions.

**District** - A specified portion of the municipality, delineated on the Shoreland Zoning Map, within which certain regulations and requirements or various combinations thereof apply under the provisions of this Ordinance.

**Dwelling** - A fixed structure, containing one or more dwelling units.

**Driveway** - A vehicular access-way less than five hundred (500) feet in length serving two single-family dwellings or one two-family dwelling, or less.

**Emergency operations** - Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings, property and livestock from the threat of destruction or injury.

**Erosion Control**- See Section 15 R

**Essential services** - Gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

**Expansion of a structure** - An increase in the floor area or volume of a structure, including all extensions such as, but not limited to: attached decks, garages, porches and greenhouses.

**Expansion of use** - The addition of one or more months to a use's operating season; or the use of more floor area or ground area devoted to a particular use.

**Family** - One or more persons occupying a premise and living as a single residential dwelling unit.

**Floodway** - the channel of a river or other watercourse and adjacent land areas that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation by more than one foot in height

**Floor area** - The sum of the horizontal areas of the floor(s) of a structure enclosed by exterior walls, plus the horizontal area of any unenclosed portions of a structure such as porches and decks

**Forest management activities** - Timber cruising and other forest resource evaluation activities, pesticide or fertilizer application, management planning activities, timber stand improvement, pruning, regeneration of forest stands, and other similar or associated activities, exclusive of timber harvesting and the construction, creation or maintenance of roads

**Forested wetland** - A freshwater wetland dominated by woody vegetation that is nineteen and a half (19.6) feet tall (six (6) meters tall) or taller.

**Forest Stand** - A contiguous group of trees sufficiently uniform in age class distribution, composition, and structure, and growing on a site of sufficiently uniform quality, to be a distinguishable unit.

**Foundation** - The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frost walls, or other base consisting of concrete, block, brick or similar material.

**Freshwater wetland** - Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

1. Of ten (10) or more contiguous acres; or of less than ten (10) contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of ten (10) acres; and
2. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.



Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

**Frontage, Shore** - The horizontal distance, measured in a straight line, between the inter-sections of the side lot lines with the shoreline at normal high water elevation.

**Frontage, Street/Road** – The distance as measured along the center of the traveled way between the intersections of the side lot lines with the traveled way.

**Functionally water-dependent uses** - Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and that can not be located away from these waters. The uses include, but are not limited to commercial and recreational fishing and boating facilities, finfish and shellfish processing, fish storage and retail and wholesale fish marketing facilities, waterfront dock and port facilities, shipyards and boat building facilities, marinas, navigation aids, basins and channels, retaining walls, industrial uses dependent upon water-borne transportation or requiring large volumes of cooling or processing water that can not reasonably be located or operated at an inland site, and uses that primarily provide general public access to coastal or inland waters. Recreational boat storage buildings are excluded.

**Great pond** - Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner,

**Great pond classified GPA** - any great pond classified GPA, pursuant to 38 M.R.S.A. Article 4- A Section 465-A. This classification includes some, but not all impoundments of rivers that are defined as great ponds. *NOTE: There are no GPA identified great ponds in the Town of Phippsburg.*

**Ground cover** - Small plants, fallen leaves, needles and twigs, and the partially decayed organic matter of the forest floor

**Harvest Area** - The area where timber harvesting and related activities, including the cutting of trees, skidding, yarding, and associated road construction take place. The area affected by a harvest encompasses the area within the outer boundaries of these activities, excepting unharvested areas greater than 10 acres within the area affected by a harvest.

**Height of a structure** - The vertical distance between the mean original (prior to construction) grade at the downhill side of the structure and the highest point of the structure, excluding chimneys, steeples, antennas, windmills, and similar appurtenances that have no floor area

**High Intensity** - A use or change of use that would result in an acute detrimental change of environmental, safety, traffic, noise and density levels.

**Home occupation** - An occupation or profession which is customarily conducted on or in a residential structure or property and which is 1) clearly incidental to and compatible with the residential use of the property and surrounding residential uses; and 2) which employs no more than two (2) persons other than family members residing in the home and excluding the rental of a dwelling unit for twenty-eight (28) days or less per calendar year.

**Increase in non-conformity of a structure** - Any change in a structure or property which causes further deviation from the dimensional standard(s) creating the nonconformity such as, but not limited to, reduction in water body, tributary stream or wetland setback distance, increase in lot coverage, or increase in height of a structure. Property changes or structure expansions which either meet the dimensional standard or which cause no further increase in the linear extent of nonconformance of the existing structure shall not be considered to increase nonconformity. For example, there is no increase in nonconformity with the setback requirement for water bodies, wetlands, or tributary streams if the expansion extends no further into the required setback area than does any portion of the existing nonconforming structure. Hence, a structure may be expanded laterally provided that the expansion extends no closer to the water body, tributary stream, or wetland than the closest portion of the existing structure from that water body, tributary stream, or wetland. Included in this allowance are expansions which in-fill irregularly shaped structures.

**Individual private campsite** - An area of land which is not associated with a campground, but which is developed for repeated camping by only one group not to exceed ten (10) individuals and which involves site improvements which may include but not be limited to a gravel pad, parking area, fire place, or tent platform.

**Industrial** - The assembling, fabrication, finishing, manufacturing, packaging or processing of goods, or the extraction of minerals, excluding the packaging/processing of harvested marine products.

**Institutional** - A non-profit or quasi-public use, or institution such as a church, library, public or private school, hospital, or municipally owned or operated building, structure or land used for public purposes.

**Land Management Road** - A route or track consisting of a bed of exposed mineral soil, gravel, or other surfacing materials constructed for, or created by, the passage of motorized vehicles and used primarily for timber harvesting and related activities, including associated log yards, but not including skid trails or skid roads.

**Licensed Forester** - A forester licensed under 32 M.R.S.A. Chapter 76.

**Lot** - A parcel of land in single ownership, described on a deed, plat, or similar legal document.

**Lot area** - The area of land enclosed within the boundary lines of a lot, minus land below the normal high-water line of a water body or upland edge of a wetland and areas beneath roads serving more than two lots.

**Lot Lines** - The lines bounding a lot.

**Lot Line, Front** - On an interior lot, the line separating the lot from the street. On a corner or through lot, the line separating the lot from either street.

**Lot line, Rear** - The lot line opposite the front lot line. On a lot pointed at the rear, the rear lot line shall be an imaginary line between the side lot lines parallel to the front lot line, not less than 10 feet long, lying farthest from the front lot line. On a corner lot, the rear lot line shall be opposite the front lot line of least dimension.

**Lot Line, Side** - Any lot line other than the front lot line or the rear lot line.

**Lot of Record** - A parcel of land, the dimensions of which is shown on a document or map on file with the County Register of Deeds or in common use by Town or County Officials, as of January 1<sup>st</sup>, 1989.

**Mapped** - An area marked for zoning on the Official Phippsburg Shoreland Zoning Map.

**Marina** - A business establishment having frontage on navigable water and, as its principal use, providing for hire offshore moorings or docking facilities for boats, and which may also provide accessory services such as boat and related sales, boat repair and construction, indoor and outdoor storage of boats and marine equipment, bait and tackle shops and marine fuel service facilities.

**Market value** - The estimated price a property will bring in the open market and under prevailing market conditions in a sale between a willing seller and a willing buyer, both conversant with the property and with prevailing general price levels.

**Mineral exploration** - Hand sampling, test boring, or other methods of determining the nature or extent of mineral resources which create minimal disturbance to the land and which include reasonable measures to restore the land to its original condition.

**Mineral extraction** - Any operation within any twelve (12) month period which removes more than one hundred (100) cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and to transport the product removed, away from the extraction site.

**Minimum lot width** - The closest distance between the side lot lines of a lot. When only two lot lines extend into the shoreland zone, both lot lines shall be considered to be side lot lines.

**Mobile Home** - A structure designed as a dwelling unit for location on a permanent foundation, and containing sleeping accommodations, a toilet, a tub or shower bath, and kitchen facilities, including major appliances and furniture, with plumbing and electrical connections provided for attachment of outside systems; and designed to be transported after fabrication on its own wheels. A mobile home shall contain not less than 450 square feet of gross floor area. Mobile homes shall be allowed on any lot of land where a

single family home would be allowed, but no mobile home may be moved into the Town or moved onto a lot within the Town before plumbing and building permits have been issued. No permits shall be issued unless that owner provides evidence demonstrating that the mobile home meets the standards of the National Manufactured Housing Construction and Safety Standards Act of 1974, U. S. Code, Title 42, Section 5401 et seq.

**Mobile Home Park-** A plot of land laid out to accommodate at least three mobile homes.

**Multi-unit residential** - A residential structure containing three (3) or more residential dwelling units.

**Native** - Indigenous to the local forests.

**New business** - For the purposes of this Ordinance, a new business is a business that meets one or more of the following criteria:

1. A business beginning operations that does not qualify as a home business under this Ordinance.
2. An existing business that expands the area devoted to retail customers by more than 20 percent.
3. An existing business that converts existing space to a different line of business, such as the conversion of a storage area to retail use, or the conversion of a portion of a retail store or all of a retail store into restaurant facilities.
4. An existing business that moves or expands to a new location or onto land that is not contiguous to the lot where the business began.
5. A home business that expands to the point where it no longer meets the criteria for home businesses under this Ordinance.
6. A grandfathered business that is sold, leased or rented to other operators shall require, without a public hearing, a transfer of permit review from the Planning Board.

**Non-conforming condition** - Non-conforming lot, structure or use which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendment took effect.

**Non-conforming lot** - A single lot of record which, at the effective date of adoption or amendment of this Ordinance, does not meet the area, frontage, or width requirements of the district in which it is located.

**Non-conforming Lot of Record** - A lot of record that does not meet the lot area and/or street frontage and/or shore frontage requirements of this Ordinance.

**Non-conforming structure** - A structure which does not meet any one or more of the following dimensional requirements; setback, height, or lot coverage, but which is allowed solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**Non-conforming use** - Use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.

**Normal high-water line (non-tidal waters)** - That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high-water are considered part of the river or great pond.

**Normal high-water line (tidal waters)** - It is the point of highest inland flow of the tides when the tides at Portland have a height of 11 feet. In the case of wetlands adjacent to rivers and ocean front, the normal high-water line is the upland edge of the wetland, and not the edge of open water.

**Permanent Foundation** - A continuous enclosed masonry foundation, heavy concrete slab or wood foundation treated to prevent decay.

**Permitted** - an allowed use only with written approval from the permitting authority.

**Person** - An individual, corporation, governmental agency, municipality, trust, estate, partnership, association, two or more individuals having a joint or common interest, or other legal entity.

**Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland -**

1. Temporary: Structures which remain in or over the water for less than seven (7) months in any period of twelve (12) consecutive months.
2. Permanent: Structures which remain in or over the water for seven (7) months or more in any period of twelve (12) consecutive months.

**Planned Unit and/or Cluster Development** - Land under unified management, planned and developed as a whole according to comprehensive and detailed plans, including street, utilities, lots and building sites, site plans and design principles for all buildings intended to be located, constructed, used and related to each other, and for other uses and improvements on the land. Developments may be single operation or a programmed series of operations including all buildings and lands, with provisions for operation and maintenance of such areas and improvements and facilities necessary for common use by the occupants of the development.

**Portable Structures** - Including but not limited to rigid framed tents and tractor trailers

**Premises** - One or more lots which are in the same ownership and are contiguous or separated only by a road or water body, including all buildings, structures, and improvements.

**Principal structure** - The building in which the primary use of the lot is conducted.

**Principal use** - A use other than one which is wholly incidental or accessory to another use on the same premises.

**Private club** - access by membership only

**Private recreational facility** - Access by membership only

**Public facility** - Any facility, including, but not limited to, buildings, property, recreation areas, and roads, which are owned, leased, or otherwise operated, or funded by a governmental body or public entity.

**Recent flood plain soils** - The following soil series as described and identified by the National Cooperative Soil Survey: Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Alluvial, Cornish, Charles, Podunk, Rumney, Saco, Suncook, Sunday, Winooski.

**Recreational facility** - A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities, excluding boat launching facilities.

**Recreational vehicle** - A vehicle or an attachment to a vehicle designed to be towed, and designed for temporary sleeping or living quarters for one or more persons, and which may include a pick-up camper, travel trailer, tent trailer, camp trailer, and motor home. In order to be considered as a vehicle and not as a structure, the unit must remain with its tires on the ground, and must be registered with the State Division of Motor Vehicles.

**Replacement system** - A system intended to replace: 1.) an existing system which is either malfunctioning or being upgraded with no significant change of design flow or use of the structure; or 2.) any existing overboard wastewater discharge.

**Residential dwelling unit** - A room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes, and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

**Residential Lot Line** - Any part of a property line within 200 feet of a dwelling.

**Residential Structure** - A residential dwelling unit built for the support, shelter or enclosure of persons

**Residual basal area** - The average of the basal area of trees remaining on a harvested site.

**Residual Stand** - A stand of trees remaining in the forest following timber harvesting and related activities

**Riprap** - Rocks, irregularly shaped, and at least six (6) inches in diameter, used for erosion control and soil stabilization, typically used on ground slopes of two (2) units horizontal to one (1) unit vertical or less.

**River** - A free-flowing body of water including its associated flood plain wetlands from that point at which it provides drainage for a watershed of twenty five (25) square miles to its mouth. *NOTE: The portion of a river that is subject to tidal action is a coastal wetland.*

**Salt marsh** - Areas of coastal wetland (most often along coastal bays) that support salt tolerant species, and where at average high tide during the growing season, the soil is irregularly inundated by tidal waters. The predominant species is salt marsh cordgrass (*Spartina alterniflora*). More open areas often support widgeon grass, eelgrass, and Sago pondweed.

**Salt meadow** - Areas of a coastal wetland that support salt tolerant plant species bordering the landward side of salt marshes or open coastal water, where the soil is saturated during the growing sea son but which is rarely inundated by tidal water. Indigenous plant species include salt meadow cordgrass (*Spartina patens*) and black rush; common three-square occurs in fresher areas.

**Seasonal** - A use, structure or activity that is in place for seven (7) months or less per calendar year

**Service drop** - Any utility line extension which does not cross or run beneath any portion of a water body provided that:

1. In the case of electric service
  - a. The placement of wires and/or the installation of utility poles is located entirely upon the premises of the customer requesting service or upon a roadway right-of-way; and
  - b. The total length of the extension is less than one thousand (1,000) feet.
2. In the case of telephone service
  - a. the extension, regardless of length, will be made by the installation of telephone wires to existing utility poles, or
  - b. the extension requiring the installation of new utility poles or placement underground is less than one thousand (1,000) feet in length.

**Setback** - The nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

**Shore frontage** - The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

**Shoreland zone** - The land area located within two hundred and fifty (250) feet, horizontal distance, of the normal high-water line of any great pond or river; within 250 feet, horizontal distance, of the upland edge of a coastal wetland, including all areas affected by tidal action; within 250 feet of the upland edge of a freshwater wetland; or within seventy-five (75) feet, horizontal distance, of the normal high-water line of a stream.

**Shoreline** - The normal high-water line or upland edge of a freshwater or coastal wetland.

**Sign** - A name, identification, description, display or illumination which is affixed to, painted or represented, directly or indirectly upon a building, structure, parcel or lot and which relate to an object, product, place, activity, person, institution, organization or business.

**Significant River Segments** - See Appendix B or 38 M.R.S.A. section. 437.

**Skid Road or Skid Trail** - A route repeatedly used by forwarding machinery or animal to haul or drag forest products from the stump to the yard or landing, the construction of which requires minimal excavation.

**Slash** - The residue, e.g., treetops and branches, left on the ground after a timber harvest.



**Special Exception Permit** - See Section 17.E.

**Stream** - A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within the shoreland area.

**Structures** - Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, such as decks, patios, and satellite dishes, including but not limited to, rigid framed tents and tractor trailer boxes.

**Subdivisions** - See Town of Phippsburg Subdivision Ordinance.

**Substantial start** - Completion of thirty (30) percent of a permitted structure or use measured as a percentage of estimated total cost, excluding the planning and design costs.

**Subsurface sewage disposal system** - Any system designed to dispose of waste or waste water on or beneath the surface of the earth; includes, but is not limited to: septic tanks; disposal fields; grandfathered cesspools; holding tanks; pretreatment filter, piping, or any other fixture, mechanism, or apparatus used for those purposes; does not include any discharge system licensed under 38 M.R.S.A. section 414 (over board discharge), any surface waste water disposal system, or any municipal or quasi-municipal sewer or waste water treatment system.

**Sustained slope** - A change in elevation where the referenced percent grade is substantially maintained or exceeded throughout the measured area.

**Tidal waters** - All waters affected by tidal action during the maximum spring tide.

**Timber harvesting** - The cutting and removal of timber for the primary purpose of selling or processing forest products. The cutting or removal of trees in the shoreland zone on a lot that has less than two (2) acres within the shoreland zone shall not be considered timber harvesting. Such cutting or removal of trees shall be regulated pursuant to Section 15.Q., Clearing or Removal of Vegetation for Activities Other Than Timber Harvesting.

**Timber harvesting and related activities** - Timber harvesting, the construction and maintenance of roads used primarily for timber harvesting and other activities conducted to facilitate timber harvesting.

**Travel Trailer** - A portable structure built as a vehicle designed for use as a temporary dwelling for travel. This structure shall not be used as a permanent dwelling in Phippsburg.

**Tributary stream** - Means a channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. "Tributary stream" does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity. This definition does not include the term "stream" as defined elsewhere in this Ordinance, and only applies to that portion of the tributary stream located within the shoreland zone of the receiving water body or wetland. *NOTE: Water setback requirements apply to tributary streams within the shoreland zone.*

**Upland edge of a wetland** - The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the maximum spring tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for duration sufficient to support wetland vegetation; or where the soils support the growth of wetland vegetation, but such vegetation is dominated by woody stems (tree trunks) that are approximately twenty (20) feet (six (6) meters) tall or taller.

**Use** - The purpose for which land or a structure is arranged, designed, or intended, or for which land or a structure is or may be occupied.

**Value** - Equal to the cost of materials plus labor at fair market rates

**Variance** - A relaxation of the terms of this Ordinance where such variance would not be contrary to the public interest and where, owing to the conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this Ordinance would result in unnecessary or undue hardship. A financial hardship shall not constitute grounds for granting a variance. The crucial points of a variance are undue hardship and unique circumstances applying to the property. A variance is not justified unless both elements are present.

**Vegetation** - All live trees, shrubs, and other plants including without limitation, trees both over and under 4 inches in diameter, measured at 4 1/2 feet above ground level.

**Velocity zone** - An area of special flood hazard extending from offshore to the inland limit of the primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

**Volume of a structure** - The volume of all portions of a structure enclosed by roof and fixed exterior walls as measured from the exterior faces of these walls and roof. Screened porches with thirty inch (30") or greater knee wall are to be considered as volume.

**Water Body** - Any great pond, river or stream.

**Water crossing** - Any project extending from one bank to the opposite bank of a river, stream, tributary stream, or wetland whether under, through, or over the water or wetland. Such projects include but may not be limited to roads, fords, bridges, culverts, water

lines, sewer lines, and cables as well as maintenance work on these crossings. This definition includes crossings for timber harvesting equipment and related activities.

**Wetland** - A freshwater or coastal wetland.

**Windfirm** - The ability of a forest stand to withstand strong winds and resist windthrow, wind rocking, and major breakage.

**Woody vegetation** - Live trees or woody, non-herbaceous shrubs

**Yard** - The area of land on a lot not occupied by the principal building.

**Yard or Garage Sale** - Casual public sale of goods, new or used, by other than an established business.

## APPENDIX B FROM 38 M. R. S. A. 437

### 38 §437. Significant river segments identified

A. For purposes of this chapter, significant river segments include the following:

1. **Aroostook River.** The Aroostook River from St. Croix Stream in Masardis to the Masardis and T.10, R.6, W.E.L.S. townline, excluding segments in T.9, R.5, and W.E.L.S.; including its tributary the Big Machias River from the Aroostook River in Ashland to the Ashland and Garfield Plantation townlines;
2. **Dennys River.** The Dennys River from the railroad bridge in Dennysville Station to the dam at Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation;
3. **East Machias River.** The East Machias River from 1/4 of a mile above the Route 1 bridge in East Machias to the East Machias and T.18, E.D., B.P.P. townline, and from the T.19, E.D., B.P.P. and Wesley townline to the outlet of Crawford Lake in Crawford, excluding Hadley Lake;
4. **Fish River.** The Fish River from the bridge in Fort Kent Mills to the outlet of Eagle Lake in Wallagrass, and from the Portage Lake and T.14, R.6, townline to the Portage Lake and T.13, R.7, W.E.L.S. townline, excluding Portage Lake;
5. **Machias River.** The Machias River from the Whitneyville and Machias townline to the Northfield T.19, M.D., B.P.P. townline;
6. **Mattawamkeag River.** The Mattawamkeag River from the outlet of Mattakeunk Stream in Winn to the Mattawamkeag and Kingman Township townline, and from the Reed Plantation and Bancroft townline to the East Branch, including its tributaries the West Branch from the Mattawamkeag River to the Haynesville T.3, R.3, W.E.L.S. townline and from its inlet into Upper Mattawamkeag Lake to the Route 2 bridge; the East Branch from the Mattawamkeag River to the Haynesville and Forkstown Township townline and from the T.4, R.3, W.E.L.S. and Oakfield townline to Red Bridge in Oakfield; the Fish Stream from the Route 95 bridge in Island Falls to the Crystal-Patten townline; and the Baskehegan Stream from its inlet into Crooked Brook Flowage in Danforth to the Danforth and Brookton Township townline;
7. **Narraguagus River.** The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township townline, excluding Beddington Lake;
8. **East Branch of Penobscot.** The East Branch of the Penobscot from the Route 157 bridge in Medway to the East Millinocket and Grindstone Township townline;
9. **Pleasant River.** The Pleasant River from the railroad bridge in Columbia Falls to the Columbia and T.18, M.D., B.P.P. townline, and from the T.24, M.D., B.P.P. and Beddington townline to the outlet of Pleasant River Lake;

**10. Rapid River.** The Rapid River from the Magalloway Plantation and Upton townline to the outlet of Pond in the River;

**11. West Branch Pleasant River.** The West Branch Pleasant River from the East Branch to the Brownville and Williamsburg Township townline; and

**12. West Branch of Union River.** The West Branch of the Union River from the Route 9 bridge in Amherst to the outlet of Great Pond in the Town of Great Pond.

<b>Amendment Summary</b>		
<b>Date</b>	<b>Section</b>	<b>Amendment</b>
1/13/10	Section 12.C.1.a	Volume % clarification
1/13/10	Section 14.	Commercial V – deleted 5
5/04/10	Section 15.B.4	Added Town Landings exemption
5/04/10	Section 15.H.1	Added Town Landings exemption

**Shoreland Zoning Map Descriptions Based on the 2007 Town of Phippsburg Tax Map**

Beginning at the south boundary of West Bath/Phippsburg line, Map 38 Lot 3 going south and around Brightwater to the east boundary of Map 32 Lot 15:

125' Resource Protection  
125' Residential  
(Exception #1 Map 37 Lot 3 Town Landing  
250' Village District; #2 Map 33 Lot 3 100'  
Resource Protection 150' Residential)

Thence, southerly from Map 32 Lot 15 to the northern boundary of Map 27 Lot 31:

250' Village District  
(Sebasco & West Point Villages)

Thence, from Map 27 Lot 31 to the northern boundary of Map 28 Lot 5:

100' Resource Protection  
150' Residential

Thence, from Map 28 Lot 5 to the northern boundary of Map 28 Lot 3:

250' Resource Protection

Thence, from Map 28 Lot 3, northerly following the upland edge of North Creek to the northern boundary of Map 29 Lot 7-1 to the confluence\* of 2 streams (North Creek and road drainage) crossing over southerly on the east side of North Creek to the northern boundary of Map 18 Lot 6:

125' Resource Protection  
125, Residential  
(\* Note: North of the confluence is Stream Protection)

Thence, from Map 18 Lot 6, southerly to the northern boundary of Map 27 Lot 5-2:

100' Resource Protection  
150' Residential

Thence, from Map 27 Lot 5-2, southerly to the northern boundary of Map 27 Lot 4:

125' Resource Protection  
125' Residential

Thence, from Map 27 Lot 4, following the shoreline southerly then in a northerly direction following the west upland edge of the marsh to the intersection of Morse's Mountain Road and route 216, Map 19 Lot 1:

75' Resource Protection  
175' Residential

Thence, from the intersection of Morse's Mountain Road and Route 216, Map 19 Lot 1, southerly following the eastern upland edge of the marsh to and around Cape Small Harbor, then in a southwesterly direction to the Head Beach Road at the southeastern most corner of Cape Small Harbor at high tide, Map 23 Lot 38:

100' Resource Protection  
150' Residential

Thence, from the southeast corner of Cape Small Harbor, Map 23 Lot 38, at high tide, northwesterly to the north end of Hermit Island Lobster Pound, part of Map 24 Lot 31:

100' Resource Protection  
150 Village District

Thence, from Map 24 Lot 31, following the shoreline to a point directly east of the north end of Hermit Island lobster pound:

250' Village District

Thence, still on Map 24 Lot 31, southerly to the north end of the beach at the north end of Wallace's Head:

125 Resource Protection  
125 Residential

Thence, still on Map 24 Lot 31, southerly following the shoreline around Wallace's Head to a point due west of the southwest corner of Map 23 Lot 35:

100' Resource Protection  
150' Residential

Thence, from Map 23 Lot 35, southerly then easterly following the shoreline around Bald Head and Cape Small to the northern boundary of Map 22 Lot 6 in Seal Cove:

250' resource Protection

Thence, from Map 22 Lot 6, in a northerly direction following the shoreline to Map 22 Lot4:

125' Resource Protection

125' Residential

Thence, from Map 22 Lot 4, in a northerly direction following the shoreline around Isaiah's Head to the intersection of the western upland edge of the Sprague River salt marsh and the northern boundary of Map 21 Lot 2:

100' Resource Protection

150' Residential

Thence, from map 21 Lot 2, northerly following the upland edge of the salt marsh of the west branch of the Sprague River, Map 20 Lot 4 & Map 19 Lot 11, then northerly again following the west upland edge of the Sprague River salt marsh to the Morse's Mountain Road, map 19 Lot 11, then easterly to the upland edge of the marsh, then southerly to the shoreline of Sewall Beach, then northeasterly following the shoreline of Seawall Beach to Morse's River, then northerly following the western upland edge of the salt marsh to the intersection of the salt marsh and Route 209 (Popham Road) Map 18 Lot 35:

250' Resource Protection

Thence, from Map 18 Lot 35, across Route 209 and around the salt marsh on the north side of Route 209 and back south across Route 209, and along the salt marsh to the southeastern boundary of Map 18 Lot38:

100' Resource Protection

150' Residential

Thence from the southeastern boundary of Map 18 Lot 38 following the upland edge of the marsh and around Spirit Pond to the southern boundary of Map 17 Lot 5:

250' Resource Protection



Thence from the southern boundary of Map 17 Lot 5 following the shoreline around Spirit Pond, then following the upland edge of the marsh across Route 209 into Atkins Bay to the northern boundary of Map 11 Lot 29 (including DeBery Pond):

100' Resource Protection  
150' Residential

Thence, from Map 11 Lot 29, northerly following the shoreline in the Parker Head Village into the western side of Mill Pond and continuing to follow the shoreline to the northern intersection of the shoreline of Map 11 Lot 56 and Parker Head Road:

250' Village District  
(Except for the former Map 11 Lot 55, which is now the northern 2/3s of Map 11 Lot 54, which is 250 Resource Protection)

Thence, crossing Parker Head Road following the shoreline from Map 11 Lot 2 to Sam Day Hill Road:

250' Village District

Thence, crossing Sam Day Hill Road to the south lagoon, following the shoreline back to the western boundary of Map 10 Lot 1-1:

250' Resource Protection

Thence, from Map 10 Lot 1-1, following the shoreline of the northern lagoon, across to the northern boundary of Map 10 Lot 4-1:

250' Village District

Thence, from the northern boundary of Map 10 Lot 4-1 to the eastern boundary of Map 11 Lot 60:

100' Resource Protection  
150' Residential

Thence, from Map 11 Lot 60, easterly and northerly to the northern boundary of map 11 Lot 59:

250' Resource Protection

Thence, from Map 11 Lot 59, northerly to the bridge at Center Pond Dam, Map 8 Lot 20:

125' Resource Protection  
125 Residential

Thence, from map 8 Lot 20, across Parker Head Road and southerly following the shoreline around Center Pond including the so-called Beaver Pond, Map 42 Lot 41, to the stream at the northern boundary of Map 42 Lot 34, then northerly following the shoreline and Route 209 to the southwest corner of Map 8 Lot 2:

100' Resource Protection  
150 Residential

Thence, from Map 8 Lot 2 easterly following the northern shoreline of Center Pond, To and across Parker Head Road, then northerly following the western shoreline of the Kennebec River to the northern boundary of map 8 Lot 27:

250' Village District

Thence, from Map 8 Lot 27, northerly and westerly following the shoreline to the west shoreline of Drummors Bay to the northern boundary of Map 7 Lot 20:

100' Resource Protection  
150' Residential

Thence, from Map 7 Lot 20, northerly following the shoreline, including around Cutting Creek, to the western boundary of Map 4 Lot 15:

125' Resource Protection  
125' Residential

Thence, from the western boundary of Map 4 Lot 15 following the upland edge of the marsh to the western boundary of Map 6 Lot 14:

250' Resource Protection

Thence, from the western boundary of Map 6 Lot 14 northerly following the shore to the southern boundary of Map 2 Lot 16:

125' Resource Protection  
125' Residential

(With the exception of the State owned landing at Fiddler's Reach which is 250' Village District Map 2 Lot 35)

Thence, from the southern boundary of Map 2 Lot 16 following the shoreline to the southern boundary of Map 3 Lot 3:

250' Resource Protection

Thence, from the southern boundary of Map 3 Lot 3 following the shoreline around Winnegance Village, to the southern boundary of Map 1 Lot 19:

250' Village District  
(with the exception of Morse's Mill, part of Map 1 Lot 28, which is zoned General Development)

Thence, from the southern boundary of Map 1 Lot 19, southerly and westerly following the shoreline to the southern boundary of Map 39 Lot 32:

100' Resource Protection  
150' Residential

Thence, from the southern boundary of Map 39 Lot 32, to the West Bath town line this is the southwest corner of Map 40 Lot 27:

250' Resource Protection

### **Islands**

Bowker's	Map 37	250' Resource Protection
Mercury	Map 36	250' Resource Protection
Bushy	Map 36	250' Resource Protection
Hen	Map 36	250' Resource Protection
Bear	Map 31	100' Resource Protection 150' Residential
Malaga	Map 31	100' Resource Protection 150' Residential
Harbor (Horse)	Map 30	100' Resource Protection 150' Residential
Burnt Coat	Map 27	100' Resource Protection 150' Residential
Carrying Place	Map 26	100' Resource Protection 150' Residential
Little Wood (off West Point)	Map 26	100' Resource Protection 150' Residential
Wood (off West Point)	Map 26	100' Resource Protection 150' Residential
Tennants	Map 24	250' Resource Protection
Seal	Map 22	250' Resource Protection

Heron	Map 15	250' Resource Protection
Fox	Map 15	250' Resource Protection
Campbell	Map 16	250' Resource Protection
Wood (off Popham)	Map 14	100' Resource Protection 150' Residential
Pond	Map 14	250' Resource Protection
Dix	Map 12	250' Resource Protection
Goat	Map 7	250' Resource Protection
Lee	Map 7	250' Resource Protection
Ram	Map 7	250' Resource Protection

All other small islands are 250' Resource Protection

## Ponds / Lakes

Sprague	Map 44	125' Resource Protection 125' Residential
Meetinghouse	Map 45	125' Resource Protection 125' Residential

**Wat-tuh Lake** **Map 29**  
From the north end of the dam, beginning in a northerly direction, around Wat-tuh Lake to the east edge of the Main Lodge, Map 29 Lot 11 is 125' Resource Protection – 125' Residential, continuing westerly to the north end of the dam is 250' Village District.

Big Map 23 125' Resource Protection  
124' Residential

Silver Lake

Map 14

Beginning at the intersection of Honeywell Avenue and Route 209 easterly following the shoreline to the east boundary of Map 14 Lot 54 50' Resource Protection 200' Residential. Thence following the shoreline to the western boundary of Map 14 Lot 60 250' Resource Protection.

Thence following the shoreline westerly to the point of beginning 100' Resource Protection 150' Residential.

**Popham Village**

Beginning at the northeast boundary of the State Park, Map 16 Lot 8, thence northerly to the southern boundary of Map 14 Lot 78

125' Resource Protection  
125' Residential

Thence, from Map 14 Lot 78 northerly and around Fort Popham to Atkins Bay, then southerly and westerly following the cove to the west boundary of Map 14 Lot 15:

250' Village District

Thence, from Map 14 Lot 15 southerly following the upland edge of the tidal wetland to and across Route 209; then northerly back across Route 209 to Atkins Bay; then to the west boundary of Map 14 Lot 12:

125' Resource Protection  
125' Residential

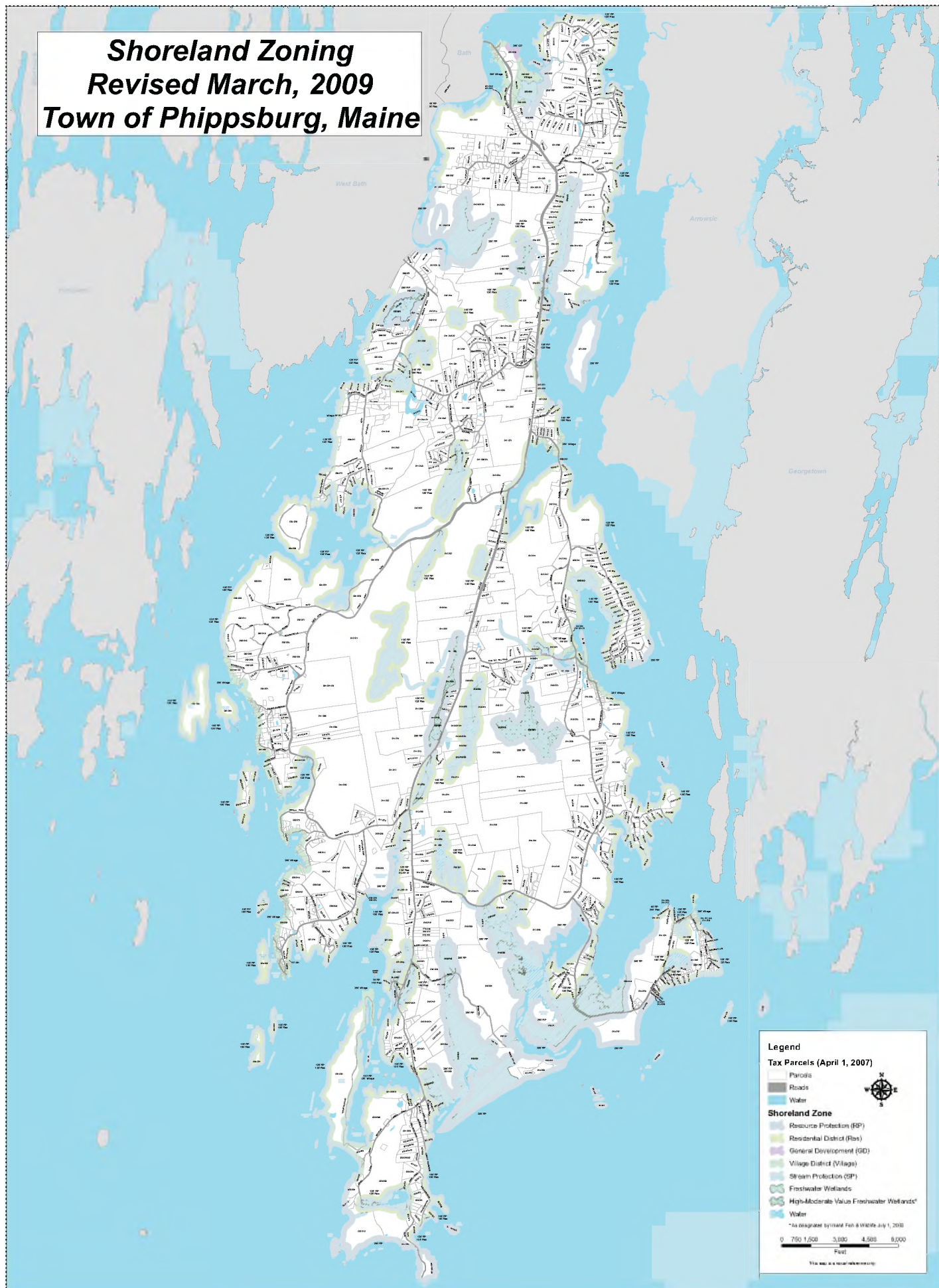
Thence, from Map 14 Lot 12, westerly to the southern boundary of Map 14 Lot 11:

50' Resource Protection  
200' Residential

Thence, from Map 14 Lot 11, southerly following the upland edge of the marsh to Route 209 then westerly following the upland edge of the marsh to the shoreline of the State Park Beach, then easterly following the shoreline to Map 16 Lot 9:

250' Resource Protection

**Shoreland Zoning**  
**Revised March, 2009**  
**Town of Phippsburg, Maine**



**SOLID WASTE ORDINANCE  
TOWN OF PHIPPSBURG  
May 1997 (as amended at the May 2002 Town Meeting)**

1. **AUTHORITY:** This Ordinance is enacted in accordance with the home rule powers of the town and provisions of title 38, MRSA, Section 1305 as amended and repeals and replaces in its entirety the "Solid Waste Flow Control Ordinance" dated March 15, 1991 and the "Construction/Demolition Debris Ordinance" amended June 25, 1994.
2. **PURPOSE:** This ordinance is to provide guidelines for the management of the Transfer Station to:
  - A. Enhance and maintain the quality of the environment, conserve natural resources and prevent air and water pollution by providing an effective means of regulating the disposal of solid waste within the Town of Phippsburg
  - B. Control the disposal of Construction/Demolition type debris generated in the Town of Phippsburg; to insure compliance with Federal and State disposal regulations; and as far as possible to provide an equitable method for assessing charges to generators of construction or demolition debris.
  - C. Encourage recycling in order to help minimize the amount of waste that the town must dispose of, to reduce the costs of solid waste disposal, and to avoid the waste of valuable natural resources.
  - D. Prevent waste that is generated outside of Phippsburg from being added to the Phippsburg waste stream.
3. **APPLICABILITY:** This ordinance shall apply to all persons using the Transfer Station of the Town of Phippsburg, including but not limited to residents, commercial haulers, commercial and industrial establishments.
4. **TRANSFER STATION ATTENDANT:** A Transfer Station Attendant and Assistant shall be hired by the Selectmen and shall work under their direction to supervise the operation of the Transfer Station.
5. **DEFINITIONS:**
  - A. **Ashes** - The residue from the burning of wood, coal, coke or other combustible material.
  - B. **Commercial Hauler** - Any person who has been permitted by the Board of Selectmen to collect and transport waste in Phippsburg as a business venture.

C. Construction/Demolition Debris - Debris resulting from the construction, remodeling, repair, and demolition of buildings or other structures. It includes, but is not limited to, building materials, asphalt, wall board, pipes, metal conduits, mattresses, household furniture, fish nets, rope, hose, wire and cable, fencing, carpeting and underlay; it excludes asbestos and other special wastes.

D. Contractor - Any person, resident or non-resident, who advertises in any manner including by "word of mouth" and who does work for hire or by contract, and in the performance of that work generates solid waste, particularly construction debris.

E. Cottage - A dwelling that has seasonal use.

F. Disposal - As defined in 38 M.R.S.A., Section 1303 (3) means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous or solid waste, sludge or septage into or on any land or water so that the hazardous or solid waste, sludge or septage or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters. Disposal also includes the placement of waste into a landfill, or transfer station despite the fact that such landfill or transfer station may be designed to minimize any discharges to the environment.

G. Hazardous Materials - All wastes and used containers which are subject to special handling by state and federal environmental safety laws and regulations, and including household toxic waste and containers. Also any waste as deemed as Hazardous Waste by the Disposal Contractor.

H. Inert fill - Clean soil material, rocks, bricks, and cured concrete, which are not mixed with other solid or liquid waste, and which are not derived from an ore mining activity, and other materials as may be designated by the Board of Selectmen.

I. Infectious Waste - Those wastes so defined by the Solid Waste Management Regulations promulgated by the Department of Environmental Protection pursuant to Title 38, MRSA 1304.

J. Liquid Waste - All unwanted or discarded material with sufficient liquid content to be free flowing, including but not limited to waste motor oil, antifreeze, paints, motor fuels, solvents, waste water and septic tank sludge.

K. Recyclable Materials - Materials designated by the Board of Selectmen as being capable of "resource recovery" in that the materials or substances have useful physical properties after serving a specific purpose and can be reused or



recycled for the same or other purposes and thus may safely and economically be removed from the waste stream.

L. Resident - Any individual, firm, corporation, partnership, association, municipality, quasi-municipal corporation, state agency or any other legal entity residing, owning, or controlling property in the Town of Phippsburg.

M. Solid Waste - Useless, unwanted, or discarded solid material with insufficient liquid content to be free-flowing, including, but not limited to, rubbish, garbage, scrap materials, junk, refuse, inert fill material, and landscape refuse, but which does not include septage tank sludge, agricultural waste or hazardous waste.

N. Solid Waste Disposal Facility - Any land or structures or combination of land area and structures, including dumps and transfer stations used for the storing, reducing, incinerating, or disposing of solid waste.

O. Town - The Town of Phippsburg in Sagadahoc County, State of Maine.

P. Transfer Station - Any waste facility constructed and managed for storage and/or processing and placement of municipal solid waste in large containers or vehicles for movement to another waste facility, and specifically as used in this ordinance, the Phippsburg Transfer Station and any and all associated land or structures for the handling, storage, or processing of disposable or recyclable materials.

Q. Waste Disposal Contractor - Contractor that accepts Solid Waste from the transfer Facility. At this time it refers to Regional Waste Systems, but may be changed at the discretion of the Board of Selectmen depending on constraints of existing contracts.

## 6. TRANSFER STATION REGULATIONS:

A. In accordance with the provisions of Title 38, MRSA 1305, the Town designates facilities on Town-Owned land off the Sam Day Hill Road in Phippsburg as its solid waste disposal facility.

B. The use of the Transfer Station shall be limited to residents, renters and property taxpayers of the Town of Phippsburg and the Board of Selectmen may impose regulations to ensure that waste generated outside the town is not deposited in the Phippsburg facility.

C. The dumping or depositing of any solid waste generated within the Town by any person at any place other than a solid waste disposal facilities is prohibited, except as follows:

(1) With the permission of the lot owner, persons may deposit or dump inert fill, subject to state and local regulations.

(2) Household organic wastes may be composted in home compost piles that are constructed and managed so as to prevent nuisance conditions.

(3) Persons engaged in saw mill or other wood processing businesses may allow sawdust and shavings to accumulate temporarily until permanent disposal is arranged.

(4) Organic matter may be spread on the surface of the land or allowed to decay on the surface of the land to serve as a fertilizer and soil conditioner, providing all local and state laws governing such practices are observed.

(5) Wood ashes and inert materials may be spread on the surface of the land as a soil amendment agent or fertilizer.

(6) The Board of Selectmen may approve private waste disposal, transfer or storage facilities for businesses, households or industries that generate wastes unacceptable or impractical for disposal in the town facility, providing all state and local waste disposal laws, land use laws and outdoor burning laws are observed.

**D. The following unacceptable wastes shall not be deposited at the Phippsburg Transfer Station.**

(1) Wastes generated outside of Phippsburg.

(2) Drums capable of holding more than five gallons unless one end is opened and the drum has been cleaned of all hazardous substances.

(3) Propane tanks unless the valves have been removed

(4) Fuel Tanks unless they have covers removed and are free of fuel

(5) Liquid wastes.

(6) Explosive wastes.

(7) Hazardous wastes.

(8) Infectious wastes.

(9) Whole animals.

(10) Wastes prohibited by the Waste Disposal Contractor, and which the Town is not required to accept under state solid waste laws.

(11) Motor Vehicles, except that the Board of Selectmen may from time to time organize special campaigns for junk car removal and make arrangements for their processing and disposal.

(12) Asbestos.

(13) Radioactive materials, other than minor residues found in ordinary household appliances and materials.

(14) Gasoline.

(15) Sewage, sludge, sewage-derived substances and wastes from waste water treatment systems, septic tanks, and so called "outhouse," composting or vault toilet systems.

(16) Other materials that may be determined to be dangerous, unhealthy or impractical for deposit at the Transfer Station.

E. Construction and Demolition Debris

(1) Construction and Demolition debris generated by a resident to do repair, remodeling, or new construction of buildings or other structures owned by the resident and transported to the Transfer Station by the resident or a person showing written proof of acting on the behalf of the resident without suitable transportation, shall be accepted at no charge.

(2) Construction and Demolition debris generated by a contractor paid by the resident to do repair, remodeling, or new construction of buildings or other structures owned by the resident, cannot be accepted at the Transfer Station. Contractors are responsible for proper disposition of all waste generated by them in the practice of their profession, and will allow for the cost of this disposition in their cost to handle a project.

(3) Construction and Demolition Debris disposed of in the container shall be no longer than (4) feet in length with the following exceptions: mattresses, box springs, and couches and any other item that the attendant deems feasible to dispose of in the container."

F. General Regulations

- (1) Temporary permit and Rental permit holders must check in with the Transfer Station Attendant.
- (2) Refrigerators and Freezers must be placed upright and have doors removed.
- (3) Children less the 16 years of age must be accompanied by an adult
- (4) No bare feet allowed
- (5) No pets allowed outside vehicles
- (6) Salvage or removal of any deposited solid waste without the approval of the Board of Selectmen is prohibited.

7. PERMITS: Use of the Transfer Station Facility will not be allowed unless an application has been completed and a permit issued by the town office. There are three types of Permits:

(A) Permanent: A permanent Transfer Station permit is a colored sticker that is sequentially numbered and has a fixed expiration date of two years. It is issued to residents and is attached to a window of the vehicle, preferably in the lower left corner of the windshield.

(B) Rental Permit: This permit is designed to be used by cottage owners who have different family members using the cottage throughout the summer season or who rent their cottages out. It is issued to the cottage owner and is left at the cottage to be used by renters or family members for disposal of solid waste generated at the cottage. This permit is valid for one calendar year.

(C) Temporary Permit: This permit is designed to allow a non-resident to take Solid waste to the Transfer Station on behalf of a resident. It is issued for only the time period that the waste will be transferred. To obtain this permit the hauler must provide evidence that they are transporting solid waste on behalf of the Resident.

(D) Commercial Permit: This permit is issued to Commercial Haulers and is valid for one calendar year.

8. ENFORCEMENT:

A. It shall be the duty of the Board of Selectmen to enforce the provisions of this ordinance, through court action, negotiated consent agreements or other legal means.

B. If any part of this ordinance is held to be invalid, such decision shall not effect the remaining portions.

C. Whoever violates any provisions of this ordinance shall be punished by a fine or not less than \$100.00 or more than \$500.00. Each day a violation continues shall constitute a separate offense. All fines levied under this ordinance shall be paid to the Town of Phippsburg. If court action is required to enforce this ordinance, the violator will be responsible for the town's court costs and reasonable attorneys fees.

D. Any person that deposits materials at the facility in violation of this ordinance, applicable state laws or the regulations adopted by the Board of Selectmen shall be liable for the full costs of removing those materials and shall be liable for any environmental damage that may result and any costs incurred in cleaning up and/or mitigating that damage.

9. Fees: The Board of Selectmen may:

A. Establish by regulation a schedule of license fees to be charged commercial haulers.

B. Review the operation of the facility and shall draft an incentive or fee system should it appear that such is needed to encourage more business and household recycling. However, no fee or incentive plan of this type shall be imposed until it has been approved by voters at Town Meeting.

10. Effective Date: This ordinance shall become effective immediately upon adoption by the May 19, 1997 Town Meeting. and remain in effect until repealed or replaced.

11. Conflicts: If any section of this Ordinance conflicts with other Town Ordinances or State Laws and Regulations, the more stringent provisions shall apply.

Given under our hands this 15th day of May 2002.

MICHAEL W. RICE  
Chairman, Board of Selectmen

ALAN B. DOUGLASS  
Board of Selectmen

PROCTOR W. WELLS  
Board of Selectmen

# TOWN OF PHIPPSBURG, MAINE

## SUBDIVISION ORDINANCE

*May 4, 2015*



**SUBDIVISION ORDINANCE  
TOWN OF PHIPPSBURG, MAINE**

**Adopted May 4, 2015**

**This Ordinance repeals and replaces in its entirety the Ordinance entitled  
“Subdivision Ordinance Town of Phippsburg June 21, 1990”**

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## ABBREVIATIONS

Board	The Planning Board
CEO	Code Enforcement Officer
DEP	Department of Environmental Protection
DMR	Department of Marine Resources
IF&W	Inland Fish and Wildlife
IBC	International Building Code
IRC	International Residential Code
LPI	Licensed Plumbing Inspector
MRSA	Maine Revised Statutes Annotated
NFPA	National Fire Protection Association
Town	Town of Phippsburg

***Applicant, Developer and Subdivider shall be considered the same and are interchangeable***

## **Section 1. Purpose**

The purpose of these regulations is to assure the comfort, convenience, safety, health and welfare of the people of the Town of Phippsburg, to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivisions within the Town of Phippsburg, Maine, the Planning Board (Board) shall consider the following criteria and other pertinent information, and before granting approval shall make findings of fact that the provisions of these regulations have been met and that the proposed subdivision will meet the following criteria of Title 30-A, M.R.S.A. Section 4404:

**A. Pollution.** The proposed subdivision will not result in undue water or air pollution. In making this determination, the Board shall at least consider:

1. The elevation of the land above sea level and its relation to the flood plains;
2. The nature of soils and sub-soils and their ability to adequately support waste disposal;
3. The slope of the land and its effect on effluents;
4. The availability of streams for disposal of effluents;
5. The applicable state and local health and water resource rules and regulations.

**B. Sufficient water.** The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision.

**C. Common water supply.** The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used.

**D. Erosion.** The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.

**E. Traffic.** The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.

**F. Sewage disposal.** The proposed subdivision will provide for adequate sewage waste disposal.

**G. Solid waste.** The proposed subdivision will not cause an unreasonable burden on the Town's ability to dispose of solid waste, if Town facilities are to be utilized.

## Section 1

**H. Aesthetic, cultural and natural values.** The proposed subdivision will not have an undue adverse effect on the natural beauty of the area, historic sites and significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife (IF & W).

**I. Conformity with local ordinances:** The proposed subdivision conforms to a duly adopted subdivision ordinance and any other pertinent ordinance. In making this determination, the Board shall interpret these ordinances;

**J. Financial and technical capacity:** The subdivider has adequate financial and technical capacity to meet the standards of this section.

**K. Surface waters; outstanding river segments.** Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.  
*(Phippsburg has no outstanding river segments per Title 12 section 402.)*

**L. Ground water.** The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.

**M. Flood areas.** Based on the Federal Emergency Management Agency's (FEMA) Flood Boundary and Floodway Maps and Flood Insurance Rate maps, and information presented by the Applicant, the Board shall determine whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plat/plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation.

### **N. Freshwater wetlands.**

1. All potential freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands.

2. River stream or brook. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9.

3. Storm water. The proposed subdivision will provide for adequate storm water management in accordance with current State of Maine Storm Water Management Law.

## **Authority and Administration**

### **A. Authority.**

1. These standards have been prepared in accordance with the provisions of Title 30-A, M.R.S.A. Section 3001 and Section 4401, et seq.

2. These standards shall be known as and may be cited as "Subdivision Ordinance of the Town of Phippsburg, Maine."

### **B. Administration.**

1. The Planning Board of the Town of Phippsburg shall administer these standards.

The provisions of these standards shall pertain to all land proposed for subdivision, as defined in Title 30-A, M.R.S.A. Section 4401, et seq. within the boundaries of the Town of Phippsburg.

### **C. Effective Date**

1. The effective date of this Ordinance is the date on which the Ordinance was adopted by the Town, May 4th, 2015.

### **D. Availability**

1. A certified copy of this Ordinance shall be filed with the Town Clerk and shall be accessible to any member of the public. Hard copies shall be made available to the public at a reasonable cost, or may be downloaded at [www.phippsburg.com](http://www.phippsburg.com). Notice of availability of this Ordinance shall be posted.

### **E. Severability**

1. Should any section or provision of this Ordinance be declared by the courts to be invalid, such decision shall not invalidate any other section or provision of the Ordinance.

**F. Amendments**

1. This Ordinance can be amended only by a majority vote at any Phippsburg Town Meeting. Such amendments shall not be effective until the date of the vote.
2. Amendments can only be initiated by a majority vote of the Planning Board, or by a majority vote of the Board of Selectmen, or by written petition signed by a number of voters equal to at least ten (10) percent of the number of votes cast in the Town at the last gubernatorial election.

### **Section 3. Administrative Procedure**

**A. Purpose.** To establish an orderly, equitable and expeditious procedure for reviewing subdivisions:

1. In order to avoid unnecessary delays, applicants shall request to be placed on the Board's agenda by contacting the Chairman at least one week in advance of a regularly scheduled meeting.
2. Applicants who attend a meeting but who are not on the Board's agenda may be heard only after all agenda items have been completed, and then only if a majority of the Board members present so vote.



## Section 4. Preapplication

### A. Procedure.

#### 1. Applicant presentation and submission of a Sketch Plan.

a. The Sketch Plan shall show, in simple sketch form, the proposed layout of roads, lots, and other features in relation to existing conditions. The Sketch Plan, which may be a free-hand penciled sketch, should be supplemented with general information to describe or outline the existing conditions of the site and the proposed development. The Sketch Plan shall be superimposed on or accompanied by a copy of the Assessor's Map(s) on which the land is located. The Sketch Plan shall be accompanied by a copy of a portion of the U.S.G.S. topographic map of the area showing the outline of the proposed subdivision.

#### b. Fees. *(Payable to the Town of Phippsburg Planning Board Account)*

i. Preapplication review \$50.00

ii. Onsite inspection \$50.00

#### 2. Question and answer period.

a. The Board may make specific suggestions to be incorporated into subsequent submissions by the Applicant.

#### 3. On-site inspection.

a. Scheduling: Within thirty (30) days after the Sketch Plan review, the Board shall hold an onsite inspection of the property. The thirty (30) days may be adjusted to account for snow cover and other weather conditions.

b. Determinations: During the onsite inspection, the Board shall determine and inform the Applicant of the required contour interval, normally twenty (20) foot, and any other suggestions deemed necessary to be included on the Preliminary Plan.

c. Flagging: The property shall be flagged by the Applicant/representative to match Sketch Plan.

4. Rights not vested: The submittal or review of the Sketch Plan shall not be considered the initiation of the review process for the purposes of bringing the plan under the protection of Title 1, M.R.S.A. Section 302.

**5. Within six (6) months after the onsite inspection, the Applicant shall submit an application for consideration of the Preliminary Plan for the proposed subdivision. Failure to do so shall require resubmission of a Sketch Plan to the Board for review.**

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**6.** Following the Sketch Plan review the Board shall establish a file for the proposed subdivision. All correspondence and submissions regarding the Sketch Plan shall be maintained in this file.

## **Section 5. Preliminary Plan Application**

### **A. Submissions.**

1. The Applicant shall submit an application for consideration of the Preliminary Plan for the proposed subdivision **within six (6) months** of the onsite Sketch Plan inspection.
2. The Preliminary Plan shall conform to the layout shown on the Sketch Plan plus any recommendations made by the Board.
3. The Applicant shall provide twelve (12) packets: a packet shall be mailed to each of the seven (7) Board members fourteen (14) days prior to the scheduled meeting and five packets shall be presented at the scheduled meeting. All Mapping shall include full size 24x36 inch maps plus reduced 11x17inch copies. These packets shall contain the following submissions:

- a. Verification of right, title or interest in the property by deed, purchase and sales agreement, option to purchase, or some other proof of interest;
- b. A Location Map adequate to show the relationship of the proposed subdivision to the abutting properties, and to allow the Board to locate the subdivision within the Town, and shall show:
  - i. Existing subdivisions within one thousand (1000) feet of the proposed subdivision;
  - ii. Locations and names of existing roads;
  - iii. Boundaries and designations of Shoreland Zoning districts;
  - iv. An outline of the proposed subdivision and any remaining portion of the owner's property if the Preliminary Plan submitted covers only a portion of the owner's entire contiguous holding.

4. Preliminary Plan. Maps or drawings may be printed or reproduced on paper, with all dimensions shown in feet or decimals of a foot. The Preliminary Plan shall be drawn to a scale of not more than one hundred (100) feet to the inch. The Board may allow plans for subdivisions containing more than one hundred (100) acres to be drawn at a scale of not more than two hundred (200) feet to the inch provided all necessary detail can easily be read.

The following information shall be shown on the Preliminary Plan or accompany the application for Preliminary Plan approval, where applicable:

## Section 5

- a.** Name of the subdivision, name of the Town and a copy of the Tax Assessor's Map and Lot number(s);
- b.** A standard boundary survey of the parcel, giving complete descriptive data by bearing and distance, made and certified by a licensed land surveyor. The corners of the parcel shall be located on the ground and marked by permanent monuments as found or set. The Plan shall indicate the type of monument found or set. The entire parcel shall be shown, including all contiguous land in common ownership within the last five years, as required by Title 30-A, M.R.S.A. Section 4401;
- c.** A title block showing the graphic map scale, name(s) and address(s) of the owner(s) of record; subdivider; individual or company who prepared the Plan; a magnetic north indicator; a revision block with the date the Plan was prepared and any subsequent revision dates;
- d.** Contour lines, unless otherwise specified by the Board, showing elevations in relation to Mean Sea Level at twenty (20) foot intervals;
- e.** The location and distances of Shoreland Zoning boundaries affecting the subdivision;
- f.** If any portion of the subdivision is in a flood prone area as depicted on the Town Flood Insurance Rate Map, the boundaries of any flood hazard area and the 100-year flood elevation shall be delineated on the Plan;
- g.** The location, names and widths of existing and proposed roads, easements, building lines, Town Landings and other open spaces on or adjacent to the subdivision;  
*Note: All proposed road names require approval from the Town E-911 Addressing Officer*
- h.** The number of acres within the proposed subdivision, location of existing property lines, existing buildings, permanent and intermittent watercourses, vegetative cover type, and other existing physical features, such as Great Ponds, freshwater wetlands, swamps, marshes, bogs and unusually large specimen trees;
- i.** The width and location of public roads or public improvements, if any, within and abutting the subdivision;
- j.** The proposed lot lines with approximate dimensions and lot size in acres to the nearest tenth;

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- k.** All parcels of land proposed to be dedicated to public use and the conditions of such dedication;
- l.** The names of owners of record of abutting property, including any property directly across any road from the subdivision;
- m.** The location and size of existing and proposed sewers, water mains, culverts, and drainage ways on or adjacent to the property to be subdivided;
- n.** The location of any common open space(s) to be preserved or improvements to be created, and a general description of proposed ownership and management;
- o.** A copy of the most recently recorded deed for the parcel. A copy of all covenants or deed restrictions, easements, rights-of-way, or other encumbrances currently affecting the property;
- p.** A copy of any additional covenants or deed restrictions intended to cover all or part of the lots in the subdivision;
- q.** Indication of existing or proposed type of sewage disposal to be used in the subdivision:
  - i.** When sewage disposal is to be accomplished by a subsurface sewage disposal system(s), test pit analyses prepared by a Licensed Site Evaluator shall be provided. A map showing the location of all test pits dug on the site shall be submitted;
  - ii.** When individual subsurface wastewater disposal systems are to be used, each test pit shall be numerically designated and shall be located in proper sequence on the subdivision plan and there shall be numeric agreement between the lots and the actual test pits themselves;
  - iii.** Whenever and wherever there is a question on the part of the Board as to the suitability of the soils on the proposed subdivision, it shall be the right of the Board to retain its own licensed soils evaluator for soil verification. Payment for this evaluation shall be at the expense of the Applicant.
- r.** Indication of the type of water supply system(s) to be used in the subdivision;

## *Section 5*

- s.** A soil erosion and sedimentation control plan prepared by the Maine Soil and Water Conservation Commission, if required by the Board;
- t.** A plan prepared by a Registered Professional Engineer for disposal of surface drainage waters in accordance with Best Management Practices, if required by the Board;
- u.** A copy of that portion of the County Soil Survey covering the subdivision. When the medium intensity soil survey shows soils which are generally unsuitable for uses proposed, the Board may require the submittal of a report by a Registered Soil Scientist indicating the suitability of soil conditions for those uses;
- v.** All proposed subdivisions, including those on islands, must provide for off-road parking and mail delivery sufficient for the number of lots within the subdivision;
- w.** Copies of agreements or other documents showing the manner in which open spaces to be retained by the developer or lot owners are to be managed and maintained. These may include homeowners association by-laws and condominium declarations;
- x.** Where applicable, obtain in writing the following State and Federal approvals:
  - i.** Maine Department of Environmental Protection, under the Site Location of Development Act;
  - ii.** Maine Department of Environmental Protection, under the Natural Resources Protection Act or Stormwater Law, or if a Maine Pollutant Discharge Elimination System wastewater discharge license is needed;
  - iii.** Maine Department of Human Services, if a public water system is to be provided;
  - iv.** Maine Department of Human Services, if an engineered subsurface waste water disposal system(s) is to be utilized;
  - v.** U.S. Army Corps of Engineers, if a permit under Section 404 of the Clean Water Act is required;
  - vi.** Maine Department of Transportation Traffic Movement Permit, and/or Highway Entrance/Driveway Access Management Permit;

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**vii.** If any areas are identified as listed on The National Register of Historic Places, the Applicant shall submit a copy of the Plan and a copy of any proposed mitigation measures to the Maine Historic Preservation Commission and their approval(s) prior to submitting the Final Plan application;

**viii.** Those areas identified as Essential Habitat by IF&W;

**ix.** If the Board is unsure whether a permit or license from a State or Federal agency is necessary, the Applicant may be required to obtain a written opinion from the appropriate agency as to the applicability of their regulations.

### **5. Fee Schedule**

**a.** An application for a Preliminary Plan shall be accompanied by a non-refundable fee of three hundred dollars (300.00) plus one hundred dollars (100.00) per lot or dwelling unit.  
(Check payable to the “Town of Phippsburg Planning Board Account”)

**b.** Additional fees may be required from the subdivider to cover Board incurred costs including, but not limited to, public hearings, advertisement and mailing.

### **6. Escrow Account**

**a.** The Applicant shall pay a fee of one hundred dollars (100.00) per lot or dwelling unit to be deposited in an Escrow Account designated for that subdivision, to be used by the Board for hiring independent consulting services as needed to assist in review of the application.

**b.** If the Escrow Account is drawn down by seventy-five (75) percent of the original deposit, the Board shall notify the Applicant that additional funds are required to bring the account back to the original amount.

**c.** Any balance in the Escrow Account remaining after the Board decision on the Final Plan application shall be returned to the Applicant.

**B. Administrative Procedure to be followed after receiving an application for consideration of the Preliminary Plan for the proposed subdivision**

The Board shall not review any Preliminary Plan application unless the Applicant or Applicant's representative attends the meeting. Should the Applicant or the Applicant's representative fail to attend, the Board shall reschedule review of the application at its next regular meeting.

1. When an application is received, the Board shall:
  - a. Issue a dated receipt to the applicant;
  - b. Notify by First Class mail all abutting property owners of the proposed subdivision, including a general description of the project;
  - c. Notify by First Class mail the clerk and the reviewing authority of municipalities that abut or include any portion of the subdivision, including a general description of the project.
2. Within thirty (30) days of receipt of a Preliminary Plan application form and fee, the Board shall notify the Applicant in writing whether or not the application is complete, and what, if any, additional submissions are required for a complete application.
3. After the Board has determined that a complete application has been filed, it shall notify the Applicant and begin its full evaluation of the subdivision.
4. The Board shall notify the Selectmen, Road Commissioner, Fire Chief, Police Chief, Rescue Chief, Transfer Station Supervisor and Chairman of RSU 1 Board of Directors, of the proposed subdivision Preliminary Plan, the number of dwelling units proposed, the length of roadways, and the size and construction characteristics of any multi-family, commercial or industrial buildings. The Board shall request that these officials comment in writing upon the adequacy of their department's existing capital facilities to service the proposed subdivision.
5. The Board shall hold a public hearing on the Preliminary Plan application. The hearing shall be held within thirty (30) days of receipt of a complete application. Notice of the date, time, and place of the hearing shall be published in a newspaper of local circulation at least two times, the date of the first publication to be at least seven (7) days prior to the hearing, but not more than fourteen (14) days. In addition, the notice of the hearing shall be posted in at least three (3) prominent places within the Town at least seven (7) days prior to the hearing. A copy of the notice shall be sent by First Class mail to abutting landowners and to the Applicant, at least ten (10) days prior to the hearing.
6. Within thirty (30) days of the public hearing, or within another time limit mutually agreed to by the Board and the Applicant, the Board shall make findings of fact on the application, and approve, approve with conditions, or deny the Preliminary Plan application. The Board shall specify in writing its findings of facts and reasons for any conditions or denial.



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7. When granting approval of a Preliminary Plan, the Board shall state the conditions of such approval, if any, with respect to:

- a. Any specific changes required to the Final Plan;
- b. The character and extent of the required improvements for which waivers may have been requested and which the Board finds may be waived without jeopardy to the public health, safety, and general welfare; and
- c. The construction items for which cost estimates and performance guarantees will be required as prerequisite to the approval of the Final Plan.

8. Approval of a Preliminary Plan shall not constitute approval of the Final Plan or intent to approve the Final Plan, but rather it shall be deemed an expression of approval of the design of the Preliminary Plan as a guide to the preparation of the Final Plan. The Final Plan shall be submitted for approval of the Board upon fulfillment of the requirements of these regulations and the conditions of preliminary approval, if any. Prior to the approval of the Final Plan, the Board may require that additional information be submitted and changes be made as a result of further study of the proposed subdivision or as a result of new information received.

**9. Within six (6) months of approval of the Preliminary Plan the Applicant must file an application for a Final Plan. See section 6.**

## **Section 6. FINAL PLAN APPLICATION**

### **A. Submissions**

**The Final Plan shall conform to the layout shown on the Preliminary Plan, including changes required by the Board.**

**The Applicant shall provide twelve (12) Final Plan packets. A packet shall be mailed to each of the seven (7) Board members fourteen (14) days prior to the scheduled meeting. Five (5) packets shall be presented at the scheduled meeting along with one reproducible, stable-based transparency of the Final Plan map to be recorded at the Sagadahoc Registry of Deeds.**

**These packets shall contain all of the approved Preliminary Plan documentation, plus the following submissions:**

#### **1. Maps and Drawings**

- a.** One copy of each map or drawing 24x36 inch, plus a reduced 11x17 inch version.
- b.** Maps and drawings shall be drawn at a scale of not more than one hundred (100) feet to the inch. The Board may allow maps and drawings for subdivisions containing more than one hundred (100) acres to be drawn at a scale of not more than two hundred (200) feet to the inch provided all necessary detail can be easily read.
- c.** The 24x36 inch maps shall have a margin of two inches outside of the border line on the left side for binding and a one inch margin outside the border along the remaining sides. Space shall be reserved for endorsement by the Board.
- d.** The Final Plan map(s) shall include:
  - i.** Any Board-required amendments to the Preliminary Plan;
  - ii.** Deed reference, legend, title, and revision blocks;
  - iii.** Name of the subdivision, name of the Town, and the Assessor's Map and Lot number(s);
  - iv.** The boundary lines of the tract, giving complete descriptive data by bearing and distance including the total number of acres, made and certified by a licensed land surveyor. The corners of the tract shall be located on the ground and marked by permanent monuments;

## *Section 6*

**v.** The location of the proposed property lines, existing buildings, watercourses, other essential existing physical features and name(s) of abutter(s);

**vi.** Location of sewage disposal test pits;

**vii.** Type of water supply system(s) to be used in the subdivision;

**viii.** The date the Plan was prepared, magnetic and true north points, graphic map scale, names and addresses of the record owner, subdivider, individual or company who prepared the Plan and subsequent revisions with dates;

**ix.** The location of any Shoreland Zoning boundaries affecting the subdivision;

**x.** The location and size of existing and proposed drainage ditches, water pipes, culverts, streams, marshes and drainage ways on or adjacent to the property to be subdivided;

**xi.** The location, names, and present widths of existing and proposed roads, easements, building lines, parks and other open spaces on or adjacent to the subdivision. The maps and drawings shall contain sufficient data to allow the location, bearing and length of every road line, lot line, and boundary line to be readily determined and to be reproduced upon the ground. These lines shall be tied to reference points previously established. The location, bearing and length of road lines, lot lines and parcel boundary lines shall be certified by a professional land surveyor. The original reproducible Plan shall be embossed with the seal of the professional land surveyor and be signed by that individual;

**xii.** The width and location of any proposed new public roads or public improvements or open space that are shown in the Comprehensive Plan, or Capital Improvements Program, if any, within the subdivision;

**xiii.** If any portion of the subdivision is in a flood-prone area, the boundaries of any flood hazard areas and the 100-year flood elevation shall be delineated on the Plan for review in accordance with the Phippsburg Flood Plain Ordinance.

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### **2. Written documentation:**

a. Copies of agreements or other documents showing the manner in which open spaces to be retained by the developer or lot owners are to be managed and maintained. These may include homeowners' association by-laws and condominium declarations.

b. The subdivider shall guarantee in writing to the buyer for one year from date of purchase available quantity/quality of potable water for each lot to the extent of refunding the price paid for the lot.

### **B. PROCEDURE:**

1. Within six (6) months after approval of the Preliminary Plan, the Applicant shall file with the Board an application for approval of the Final Plan. The Applicant may request an extension of time in which to submit the Final Plan. If the application for the Final Plan is not submitted within six (6) months or within an extension granted, the Board may require resubmission of the Preliminary Plan. The Final Plan shall approximate the layout shown on the Preliminary Plan, plus any recommendations made by the Board.

a. If an Applicant cannot submit the Final Plan within six (6) months, due to delays caused by other regulatory bodies, or other reasons, the Applicant may request an extension. Such a request for an extension to the filing deadline shall be filed, in writing, with the Board prior to the expiration of the filing period. In considering the request for an extension, the Board shall make findings that the Applicant has made due progress in preparation of the Final Plan and in pursuing approval of the plans before other agencies, and that town ordinances or regulations which may impact the proposed development have not been amended.

2. All applications for Final Plan approval for a subdivision shall be accompanied by a non-refundable application fee of three hundred (300.00) dollars, payable by check to the "Town of Phippsburg Planning Board Account."

3. The Applicant shall also be subject to the replenishment of the Escrow Account per Section 5. A. 6.

4. The Applicant, or his duly authorized representative, shall attend the meeting of the Board to discuss the Final Plan.

5. Upon filing the application, the Board shall issue a dated receipt to the Applicant.

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## Section 6

6. Within thirty (30) days of the receipt of the Final Plan application, the Board shall determine whether the application is complete and notify the Applicant in writing of its determination. If the application is not complete, the Board shall notify the Applicant of the specific additional material needed to complete the application.

7. Upon determination that a complete application had been submitted for review, the Board shall notify the Applicant in writing. The Board shall determine whether to hold a public hearing on the Final Plan application.

8. If the Board decides to hold a public hearing, it shall hold the hearing within thirty (30) days after the issuance of a receipt for the submittal of a complete application. This hearing shall be advertised in a newspaper of local circulation (e.g. *The Times Record*) at least two (2) times, the date of the first publication to be at least seven (7) days but not more than fourteen (14) days before the hearing and the notice of the hearing shall be posted in at least three prominent places in the Town at least seven (7) days, but not more than fourteen (14) days prior to the hearing

9. When a subdivision is located within five hundred (500) feet of the boundary of an abutting municipality, and a public hearing is to be held, the Board shall notify the Clerk and the Planning Board of the adjacent municipality at least ten (10) days prior to the hearing. If any portion of a subdivision crosses municipal boundaries, the reviewing authorities from each municipality shall meet jointly to discuss the application.

10. Before the Board grants approval of the Final Plan, the subdivider shall meet the performance guarantee requirements contained in Section 11.

11. The Board, within thirty (30) days from the public hearing, or within sixty (60) days of receiving a complete application, or within another time limit as may be mutually agreed to by the Applicant and the Board, shall make findings of fact and conclusions relative to the standards contained in Title 30-A, M.R.S.A. Sec. 4404, and in this Ordinance.

12. If the Board finds that all standards of the Statute and this Ordinance have been met, they shall approve the Final Plan. If the Board finds that any of the standards of the Statute and this Ordinance have not been met, the Board shall either deny the application, or approve the application with conditions, to ensure all of the standards will be met by the subdivision. The reasons for any conditions shall be stated in the records of the Board.

### **C. FINAL APPROVAL AND FILING.**

1. No Plan shall be approved by the Board as long as the Applicant is in default on a previously approved Plan.

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- 2.** Upon findings of fact and determination that all standards in Title 30-A, M.R.S.A., Section 4404, and this Ordinance have been met, the Board shall specify in writing its findings of facts and reasons for any conditions or denial. Upon voting to approve the subdivision, the Board shall sign the mylar of the Final Plan. One working copy of the signed Plan shall be retained by the Board as part of its permanent records. One copy of the signed Plan shall be forwarded to the Tax Assessors/Selectmen. One copy of the signed Plan shall be forwarded to the Code Enforcement Officer. The Subdivision Plan must be recorded in the Sagadahoc Registry of Deeds by the Applicant within ninety (90) days from the date of approval or the Plan shall become null and void. A signed/sealed copy shall also be returned to the Board by the Applicant within ten (10) days of recordation.
- 3.** At the time the Board grants Final Plan approval, it may permit the Plan to be divided into two or more phases subject to any conditions the Board deems necessary in order to ensure the orderly development of the Plan. If Town Officials inform the Board that the Town does not have adequate facilities to service the subdivision, the Board may require the Plan to be divided into two or more phases subject to any conditions the Board deems necessary in order to allow the orderly planning, financing and provision of public services to the subdivision.
- 4.** No changes, erasures, modifications, or revisions shall be made to the Final Plan after approval has been given by the Board and endorsed in writing on the Plan, unless a revised Final Plan is first submitted and revision(s) with dates are marked on the Plan and the Board approves any modifications, except in accordance with Section 6.C.2. The Board shall make findings that the revised plan meets the standards of Title 30-A, M.R.S.A., Section 4404, and this Ordinance. In the event the Plan is recorded without complying with this requirement, it shall be considered null and void, and the Board shall institute proceedings to have the Plan stricken from the records of the Sagadahoc Registry of Deeds.
- 5.** The approval by the Board of a subdivision Plan shall not be deemed to constitute or be evidence of any acceptance by the Town of any road easement, recreational area or other open space shown on such Plan. Approval of the Plan shall not constitute an acceptance by the Town of such areas. The Board shall require the Plan to contain appropriate notes to this effect.
- 6.** Failure to complete substantial construction of the subdivision within five (5) years of the date of approval and signing of the Plan shall render the Plan null and void. Upon determining that a subdivision's approval has expired under this paragraph, the Board shall have a notice to that effect placed in the Sagadahoc Registry of Deeds.

## **Section 7. GENERAL STANDARDS**

In reviewing applications for a subdivision, the Board shall consider the following general standards and make findings that each has been met prior to the approval of a Final Plan. In all instances the burden of proof shall be upon the Applicant.

**A. Conformance with Comprehensive Plan. All proposed subdivisions shall be in conformity with the Comprehensive Plan of the Town of Phippsburg.**

**B. Retention of Common Land and Natural or Historic Features.**

**1.** A subdivision of six (6) lots or greater, the developer shall provide common land for use by the residents of that subdivision. Common land shall be calculated at four thousand (4000) square feet per subdivision lot.

**2.** Land reserved for common land purposes shall be of a character, configuration and location suitable for the particular use intended. Preservation of historic attributes shall be considered by the Board.

**C. Land Suitable for Development**

**1.** The net residential acreage shall be calculated by taking the total area of the proposed subdivision and subtracting the following:

- a.** The area of proposed roads and parking;
- b.** Portions of the lot shown to be in a floodway or a coastal high hazard zone as designated in the Flood Boundary and Floodway Map prepared by the Federal Insurance Administration;
- c.** Portions of the lot which are unsuitable for development in their natural state due to topographical, drainage or subsoil conditions such as, but not limited to:
  - i.** Slopes greater than 20%;
  - ii.** Wetland soils;
  - iii.** Portions of the lot subject to rights of way including utility easements;
  - iv.** Portions of the lot located in the Resource Protection district;
  - v.** Land below the normal high water mark of any water body;
  - vi.** Lands identified for reserve septic sites;
  - vii.** Portions of the lot covered by surface waters;
  - viii.** Portions of the lot utilized for storm water management facilities;
  - ix.** Land that has been created by filling or draining a pond or wetland.

**D. Skyline Building Height**

All building heights shall be in compliance with applicable Town ordinances.

**E. Lots**

- 1.** The minimum lot size shall be forty thousand (40,000) sq. ft. per single family residential dwelling unit
- 2.** Lot configuration shall be designed to provide for a minimum of two (2) off-road parking spaces. Island lots shall provide mainland parking for a minimum of two (2) off-road parking spaces.
- 3.** Land on one side of a road or a body of water more than fifteen (15) feet wide may not be combined with land on the other side of the road or the body of water to meet the minimum lot size.
- 4.** The ratio of lot length to width shall not be more than three (3) to one (1) for any lot.

**F. Required Improvements**

The following improvements are required for all subdivisions unless waived by the Board in accordance with provisions of these regulations.

**1. Permanent Markers (see definition)**

- a.** Shall be set at all road intersections and points of curvature;
- b.** Shall be set at all other subdivision boundary corners and angle points;
- c.** Shall be set at all lot boundary corners and angle points;
- d.** Shall be permanently set into the ground a minimum of four (4) feet. If the four (4) feet is unobtainable, the Permanent Marker shall be set as required by the Maine Board of Registration of Land Surveyors

**2. Water Supply**

- a.** If a central water supply system is provided by the subdivider, the location and protection of the source, and the design, construction and operation of the system shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144A C.M.R. 231).
- b.** If individual private wells are to be used, wells shall conform to the standards of the Maine Rules Relating to Drinking Water (10-144A C.M.R. 232).



**3. Sewage Disposal**

- a.** The developer shall submit a lot-by-lot plan of soil suitability for subsurface sewage disposal prepared by a Maine Licensed Site Evaluator in full compliance with the requirements of the State of Maine Subsurface Wastewater Disposal Rules. In addition, on lots in which the limiting factor has been identified as being within twelve (12) inches of the surface, a second site with suitable soils shall be shown as a reserve area for future replacement of the disposal area. The reserve area shall be shown on the Plan and restricted so as not to be built upon.
- b.** In no instance shall a disposal area be permitted on soils or on a lot which would require a New System Variance from the State of Maine Subsurface Wastewater Disposal Rules.
- c.** A lot not having suitable soils for an onsite disposal system may be served by a shared system on an adjoining lot or a central sewer system in compliance with State of Maine Subsurface Wastewater Disposal Rules.

**4. Solid Waste**

If the additional solid waste from the proposed subdivision exceeds the capacity of the Town's solid waste facility and causes the facility to no longer be in compliance with its license from the Department of Environmental Protection, or causes the Town to exceed its contract with a non-municipal facility, the Applicant shall make alternate arrangements for the disposal of solid waste. The alternate arrangements shall be at a disposal facility which is in compliance with its license. The Board may not require the alternate arrangement to exceed a period of five years.

**5. Surface Drainage**

- a.** Where a subdivision is traversed by a stream, river, or surface water drainage way, or where the Board determines that surface water runoff to be created by the subdivision should be controlled, a storm water management system designed by a Registered Professional Engineer shall be provided.
- b.** Drainage easement(s) conforming substantially with existing natural contours for an existing watercourse, or for a proposed drainage way, shall be provided and indicated on the Plan.

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**c.** The developer shall provide a statement from the designing engineer that the proposed subdivision will not create erosion, drainage or runoff problems either in the subdivision or on other properties. Where the peak runoff from the subdivision onto other properties is increased either in volume or duration, easements from the abutting property owners, allowing such additional discharge, shall be obtained.

**d.** A storm water drainage plan, showing ditching, culverts, storm drains, easements, and other proposed improvements, shall be submitted.

### **6. Erosion and Sedimentation and Impact on Water Bodies**

**a.** The proposed subdivision shall prevent soil erosion and sedimentation from entering waterbodies, wetlands, and adjacent properties.

**b.** The procedures outlined in the erosion and sedimentation control plan shall be implemented during the site preparation, construction, and clean-up stages.

**c.** Cutting or removal of vegetation along waterbodies shall be done in compliance with the Town of Phippsburg Shoreland Zoning Ordinance.

**d.** Topsoil shall be considered part of the subdivision and shall not be removed from the site except for surplus topsoil from roads, parking areas, and building excavations.

### **G. Dedication and Maintenance of Common Land and Services.**

**1.** All common land shall be owned jointly or in common by the owners of the dwelling units or lots by means of a Homeowners Association.

**2.** Subdivision of the common land and its use for other than non-commercial recreation or conservation purposes shall be prohibited.

**a.** Easements for underground utilities and reserve space for replacement septic systems may be allowed with Board approval.

**b.** Structures and buildings accessory to non-commercial recreational or conservation uses may be erected on the common land with Board approval.

**3.** The common land shall be shown on the Final Plan with appropriate notation on the Plan to indicate that it shall not be used for future building lots or units.

## *Section 7*

**4.** If any or all of the common land and services are to be reserved for use by the residents, the bylaws of the proposed Homeowners Association shall specify maintenance responsibilities and shall be submitted to the Board prior to Final Plan approval.

**5.** Covenants for mandatory membership in the Homeowners Association setting forth the owners' rights, interests, and privileges in the Homeowners Association and the common land and facilities, shall be reviewed by the Board and included in the deed for each lot or dwelling.

**6.** The Homeowners Association shall have the responsibility of maintaining the common land and facilities.

**7.** The Homeowners Association shall levy annual charges against all owners of dwelling units or lots to defray the expenses connected with the maintenance of common land and facilities, roads and tax assessments.

**8.** The subdivider shall maintain control of the common land and facilities, and be responsible for its maintenance until development sufficient to support the Homeowners Association has taken place.

### **H. Construction in Flood Prone Areas**

**1.** Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the Applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the Applicant shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision Plan must include a condition of Plan approval requiring that principal structures in the subdivision shall be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation. If any portion of a lot is within the flood plain such designation shall be indicated in the deed.

**2.** Other State and Federal permits may be required in flood hazard areas.

## **Section 8. ROAD AND STORM DRAINAGE DESIGN AND CONSTRUCTION**

### **A. General Requirements.**

1. The Board shall not approve any subdivision plan unless proposed roads and storm water management systems are designed in accordance with the specifications contained in these regulations or any other local ordinance requirements specified by the Board. Approval of the Final Plan by the Board shall not be deemed to constitute or be evidence of acceptance by the Town of any road or easement.

2. The Applicant shall submit to the Board, as part of the Final Plan, detailed construction drawings showing a plan view, profile, and typical cross-sections of the proposed roads. The plans shall include the following information:

- a. Date, scale, magnetic and true north points;
- b. Intersections of the proposed road with existing roads;
- c. Roadway and right-of-way limits including edge of traveled way and edge of shoulder;
- d. Type, size, location, material, profile and cross-section of all existing and proposed drainage structures and their location with respect to the existing natural waterways and proposed drainage ways;
- e. Complete curve data shall be indicated for all horizontal and vertical curves;
- f. Turning radii at all intersections turn-arounds and cul-de-sacs;
- g. Center line gradients;
- h. Locations of all existing and proposed overhead and underground utilities.

3. Upon receipt of plans for a proposed public road the Board shall forward one copy each to the Selectmen and the Road Commissioner for review and comment.

4. No lot in a subdivision may be sold, leased, or otherwise conveyed before an approved road is completed to that lot.

5. Any lot or lots with legally contested boundary lines shall not be sold until written proof of agreement has been provided to the Board.

**B. Road Standards**

1. These design standards shall be met by all roads within subdivisions, and shall control the roadway, shoulders, curbs, sidewalks, drainage systems, culverts, and other appurtenances.

2. The character, extent, width, and grade of all roads shall be considered in their relation to existing or planned roads.

3. Roads should be designed to discourage through traffic within a residential subdivision.

4. The subdivision shall designate no more than two access/egress points, either roads or driveways, for the subdivision unless there are special safety or topographical considerations to be determined by the Board. Any access/egress road for the subdivision shall have a twenty (20) foot setback from any subdivision property line.

5. Where a subdivision lot abuts or contains an existing or proposed public road, the lot shall not have direct vehicular access to the public road, except as determined by the Board in Section 8. B. 2. **Any restriction/determination shall be noted on the Final Plan and affected deeds.**

6. All roads in a subdivision shall be designed and constructed to meet the following standards:

a. Minimum right-of-way	50 ft.
b. Minimum width of travel surface	18 ft.
c. Maximum grade	10%
d. Maximum grade at intersections	3% within 50 ft. of intersections
e. Minimum angle of intersections	90 degrees
f. Width of shoulders	2 ft.
g. Road base (minimum) gravel	12 inches gravel
h. Road crown (minimum)	½ inch per ft. gravel; ¼ inch per ft. paved
i. Adequate dead end road turn around	per Section: 8.B.8.

7. The center line of the roadway shall be the center line of the right-of-way.

**8. Dead End Roads.**

a. In addition to the design standards above, dead-end roads shall be constructed to provide a cul-de-sac turn-around with sixty-five (65) ft. radii and eighteen (18) ft. travel surface with two (2) ft. shoulders, or, the traveled way shall extend a minimum of seventy-five (75) ft. beyond a turning branch which shall also be a minimum of seventy-five (75) ft. in length. The travel surface of a turn-around extension and branch shall be a minimum of thirty (30) ft. in width.

**9. Grades, Intersections, and Sight Distances.**

- a. Grades of all roads shall conform in general to the terrain so that cut and fill are minimized while maintaining the grade standards above.
- b. All changes in grade shall be connected by vertical curves to provide for the minimum sight distances specified in the table below.
- c. Where new road intersection or driveway curb-cuts are proposed, the minimum sight distance shall be two hundred and fifty (250) ft. as measured along the road onto which traffic will be turning. Sight distances shall be based upon the posted speed limit and conform to the table below:

Posted Speed Limit (mph) -	0-25	30	35	40	45	50	55
Sight Distance (feet)	-	250	300	350	400	450	500

- d. Corner lots shall be cleared of all growth and sight obstructions, including ground excavation, to achieve the required sight distances above.

**10. Preparation of Road.**

- a. Before any clearing has started on the right-of-way, the center line and side lines of the new road shall be staked or flagged at fifty foot intervals.
- b. Before grading is started, the entire right-of-way shall be cleared of all stumps, roots, brush, and other objectionable material. All large boulders, and tree stumps shall be removed from the right-of-way.
- c. All organic materials shall be removed to a depth of two feet below the sub-grade of the roadway. Rocks and boulders shall also be removed to a depth of two feet below the sub-grade of the roadway. On soils which have been identified as not suitable for roadways, the subsoil shall be removed from the road site to a depth of two feet below the sub-grade and replaced with suitable gravel material, as follows:
  - i. The sub-base course aggregate shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls or clay and other deleterious substances. The gradation of the part that passes a 3 inch square mesh sieve shall meet the following grading requirements:

Sieve Designation	Percentage by Weight Passing Square Mesh Sieves
1/4 inch	25-70%
No. 40	0-30%
No. 200	0-7%

## Section 8

Aggregate for the sub-base shall contain no particles of rock exceeding four inches in any dimension.

ii. The sub-base course aggregate shall be sand or gravel of hard durable particles free from vegetative matter, lumps or balls of clay and other deleterious substances. The gradation of the part that passes a 3 inch square mesh sieve shall meet the following grading requirements:

Sieve Designation	Percentage by Weight Passing Square Mesh Sieves
1/2 inch	45-70%
1/4 inch	30-55%
No. 40	0-20%
No. 200	0-5% paved surface
No. 200	7-12% gravel surface

d. Side slopes shall be no steeper than a slope of three (3) feet horizontal to one (1) foot vertical (3to1), and shall be stabilized per the Maine Stormwater Best Management Practices Manual.

### 11. Additional Improvements and Requirements

**a. Erosion Control.** The procedures outlined in the Maine Stormwater Best Management Practices Manual shall be implemented during the site preparation, construction, and cleanup stages.

**b. Cleanup.** Following road construction, the developer or contractor shall conduct a thorough clean-up of road construction debris from the entire road right-of-way. Onsite disposal of the stumps and road construction spoils shall be indicated on the Plan, and shall be suitably covered with fill sand topsoil, limed, fertilized, and seeded, when completed.

**c. Road Names, Signs.** Roads which join and are in alignment with roads of abutting or neighboring properties shall bear the same name. Names of new roads shall not duplicate, nor bear phonetic resemblance to the names of existing roads within the Town, and shall be subject to the approval of the E-911 Addressing Officer and the Board. The developer shall reimburse the Town for the costs of installing traffic safety and control signs within the public right of way if required by the Road Commissioner.

**d. Mailboxes** shall be placed in accordance with current U.S. Postal Service requirements.

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**e. Certification of Construction.** Upon completion of road construction and at the direction of the Board, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the Board at the expense of the Applicant, certifying that the completed road meets or exceeds the design and construction requirements of the subdivision ordinance.



## Section 9. Cluster Developments

### A. Purpose.

1. The purpose of these provisions is to allow for flexibility in the design of housing developments to allow for the creation of open space, which provides recreational opportunities or protects important natural features from the adverse impacts of development. Notwithstanding provisions of the ordinance relating to dimensional requirements, the Board, in reviewing and approving proposed residential subdivisions, may modify the provisions related to dimensional requirements to permit flexibility in approaches to housing and environmental design in accordance with the following guidelines. This shall not be construed as granting variances to relieve hardship, and action by the Board of Appeals shall not be required.
2. Cluster subdivisions are prohibited in the Shoreland Zone.
3. Multi-unit housing shall not exceed ten (10) units per structure.

### B. Basic Standards for Cluster Developments.

1. Cluster developments shall meet all requirements of this ordinance except as modified by Section 9.
2. Each structure shall be an element of an overall plan for site development. Only developments having a total site plan for structures will be considered. The application shall illustrate the placement of structures and the treatment of spaces, paths, roads, service and parking and in so doing shall take into consideration all requirements of this section and of other relevant sections of these regulations.
3. The Board shall allow lots within cluster developments to be reduced in lot area (*to no less than twenty thousand [20,000] sq. ft.*), street frontage and lot width below the minimum normally required by this ordinance in return for provision of common open space, as long as the net residential density of forty thousand (40,000) sq. ft. per residential dwelling unit is not exceeded, according to the calculations in Section 7.C.
4. The net residential acreage shall be calculated per Section 7.C.
5. In order to determine the maximum number of residential dwelling units permitted on a tract of land, the net residential acreage as determined in Section 7.C. shall be divided by forty thousand (40,000) sq. ft.

## *Section 9*

6. The total area of common open space within the development shall equal or exceed the sum of the areas by which any building lots are reduced below the minimum lot area normally required forty thousand (40,000) sq. ft.. However, at least fifty percent (50%) of the area of the entire parcel or tract shall be included as common open space. Common open space shall not include road rights-of-way, streets, drives, or parking. No more than fifty percent (50%) of the common open space shall consist of forested or open wetlands of any size.
7. Common open space may not be divided into more than two (2) separate parcels.
8. The minimum distance between residential structures shall not be less than forty (40) feet.
9. No individual lot or dwelling unit shall have direct vehicular access onto a public road existing at the time of development.
10. The common open space shall be owned and managed according to the standards of Section 7.G..
11. The Applicant shall be responsible for the maintenance of the common open space and the other common facilities, until development sufficient to support the homeowners association has taken place. The transfer of responsibility shall occur only after review and approval by the Board, upon request by the homeowners association or the Applicant.

## **Section 10. Inspections and Enforcement**

### **A. Inspection of Required Improvements.**

1. The subdivider or builder shall notify the Codes Enforcement Officer in writing at least five (5) days in advance of each major construction phase.

2. If the inspecting official finds upon inspection of the improvements that any of the required improvements have not been constructed in accordance with the plans and specifications filed by the subdivider, the inspecting official shall so report in writing to the Selectmen, Board, and the subdivider and builder. The Selectmen shall take any steps necessary to assure compliance with the approved plans.

3. If at any time before or during construction of the required improvements, it appears to be necessary or desirable to modify the required improvements, the subdivider shall obtain permission to modify the plans from the Board.

4. Upon completion of road construction and prior to a vote by the Town Meeting, a written certification signed by a professional engineer registered in the State of Maine shall be submitted to the Selectmen at the expense of the Applicant, certifying that the proposed town way meets or exceeds the design and construction requirements of these regulations. If any utilities are installed, the servicing utility shall certify in writing that they have been installed in a manner acceptable to the utility.

### **B. Violations and Enforcement.**

1. No Plan of a division of land within the Town which would constitute a subdivision shall be recorded in the Registry of Deeds until a Final Plan has been approved by the Board in accordance with these regulations.

2. No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in a subdivision which has not been approved by the Board and recorded in the Sagadahoc Registry of Deeds.

3. No person, firm, corporation or other legal entity may convey, offer or agree to convey any land in an approved subdivision which is not shown on the Final Plan as a separate lot.

## *Section 10*

**4** Any person, firm, corporation or other legal entity who conveys, offers or agrees to convey any land in a subdivision which has not been approved as required by these regulations shall be fined by not less than five hundred (500) dollars, and not more than two thousand five hundred (2,500) dollars for each such conveyance, offering or agreement. The Town shall institute proceedings to enjoin the violation of this section, and shall attempt to collect attorneys' fees and court costs if the Town is the prevailing party.

**5** No public utility, or any utility company of any kind shall serve any lot in a subdivision for which a Final Plan has not been approved by the Board.

**6** Development of a subdivision without Board approval shall be a violation of Town Ordinance and State Law. Development includes grading or construction of roads, grading of land or lots, or construction of buildings which require a Final Plan approved as provided in these regulations and recorded in the Sagadahoc Registry of Deeds.

## **Section 11 Performance Guarantee**

**A. Types of Guarantees.** With submittal of the application for Final Plan approval, the subdivider shall, at the direction of the Board, provide one of the following performance guarantees for an amount adequate to cover the total construction costs of all required improvements, taking into account the time-span of the construction schedule and the inflation rate for construction costs:

1. Either a certified check payable to the Town or a savings account, or certificate of deposit naming the Town as owner, for the establishment of an escrow account; or
2. A performance bond payable to the Town, issued by a surety company, approved by the Selectmen; or
3. An irrevocable letter of credit from a financial institution establishing funding for the construction of the subdivision, from which the Town may draw if construction is inadequate, approved by the Selectmen; or
4. An offer of conditional approval limiting the number of units built or lots sold until all required improvements have been constructed.

The conditions and amount of the performance guarantee shall be determined by the Board. The advice of the Road Commissioner and Selectmen may be required as part of this determination.

**B. Contents of Guarantee.** The performance guarantee shall contain a construction schedule, cost estimates for each major phase of construction taking into account inflation, provisions for inspections of each phase of construction, provisions for the release or part or all of the performance guarantee to the developer, and a date after which the developer will be in default and the Town shall have access to the funds to finish construction.

**C. Escrow Account.** A cash contribution to the establishment of an escrow account shall be made by either a certified check made out to the Town, the direct deposit into a savings account, or the purchase of a certificate of deposit. For any account opened by the subdivider, the Town shall be named as owner or co-owner, and the consent of the Town shall be required for a withdrawal. Any interest earned on the escrow account shall be returned to the subdivider unless the Town has found it necessary to draw on the account, in which case the interest earned shall be proportionately divided between the amount returned to the subdivider and the amount withdrawn to complete the required improvements.

**D. Performance Bond.** A performance bond shall detail the conditions of the bond, the method for release of the bond or portions of the bond to the subdivider, and the procedures for collection by the Town. The bond documents shall specifically reference the subdivision for which approval is sought.

## *Section 11*

**E. Letter of Credit.** An irrevocable letter of credit from a bank or other lending institution with offices in the region shall indicate that funds have been set aside for the construction of the subdivision for the duration of the project and may not be used for any other project or loan.

**F. Phasing of Development.** The Board may approve plans to develop a subdivision in separate and distinct phases. This may be accomplished by limiting final approval to those lots abutting that section of the proposed subdivision road which is covered by a performance guarantee. When development is phased, road construction shall commence from an existing public way. Final approval of lots in subsequent phases shall be given only upon satisfactory completion of all requirements pertaining to previous phases.

**G. Release of Guarantee.** Prior to the release of any part of the performance guarantee, the Board shall determine to its satisfaction that the proposed improvements meet or exceed the design and construction requirements for that portion of the improvements for which the release is requested.

**H. Default.** If, upon inspection, the Board finds that any of the required improvements have not been constructed in accordance with the plans and specifications filed as part of the application, they shall so report in writing to the Codes Enforcement Officer, the Selectmen, and the subdivider or builder. The Selectmen shall take any steps necessary to preserve the Town's rights.

**I. Private Roads.** Where the subdivision roads are to remain private roads, **the following words shall appear on the recorded plan:**

"All roads in this subdivision shall remain private roads to be maintained by the developer or the lot owners and shall not be maintained by the Town."

**J. Improvements Guaranteed.** Performance guarantees shall be tendered for all improvements required by Section 7.F.1-6. of these regulations, as well as any other improvements required by the Board.

## **Section 12. Waivers**

**A.** With respect to submission requirements or standards, when the Board makes written findings of fact that there are special circumstances relating to a proposed subdivision, it may waive portions of the submission requirements or the standards, unless otherwise indicated in the regulations, to permit a more practical development, provided the public health, safety, and welfare are protected, and provided the waivers do not have the effect of nullifying the intent and purpose of The Comprehensive Plan, The Shoreland Zoning and Land Use Ordinances, Section 1 of this Ordinance, or Maine State Law.

**B.** With respect to required improvements, when the Board makes written findings of fact that special circumstances exist in the proposed subdivision and these improvements are not requisite to provide for the public health, safety or welfare, or are inappropriate because of inadequate or lacking connecting facilities adjacent to or in proximity of the proposed subdivision, it may waive the requirement for such improvements, subject to appropriate conditions.

**C.** In granting waivers to any of these regulations in accordance with Sections 12.A. and 12. B. the Board shall require such conditions as will assure the objectives of these regulations are met.

**D.** When the Board grants a waiver to any of the improvements required by these regulations, the Final Plan, to be recorded at the Registry of Deeds, shall indicate the waivers granted and the date on which they were granted.

## **Section 13. Appeals**

A. An appeal of a written decision by the Board must be submitted within thirty (30) days to the Board of Appeals. Any appeal must be in accordance with the Town Board of Appeals Ordinance.



## **Section 14. DEFINITIONS**

**A.** A term not defined here shall have the customary and applicable dictionary meaning as found in Randall House Webster's Dictionary 2nd Edition, copyright 2001 by Randall Publishing, Inc. A copy of this dictionary is located in the Phippsburg Town Hall.

**B.** For the purposes of **this Ordinance**, the following definitions shall apply:

**ACRE:** An acre contains 43,560 sq. ft.

**APPLICANT:** The person applying for subdivision approval under these regulations.

**AVERAGE DAILY TRAFFIC (ADT):** The average number of vehicles per day that enter and exit the premises or travel over a specific section of road.

**BUILDING:** See Structure

**CENTER LINE GRADIENT:** Degree of inclination, or the rate of ascent or descent, in a roadway.

**CLUSTER SUBDIVISION:** A subdivision in which the lot sizes are reduced below the forty thousand (40,000) sq. ft. per single family dwelling unit required in the Land Use Ordinance, in return for the provision of permanent open space owned in common by lot/unit owners. Clustering shall not be used to increase the overall net residential density of the development. This includes town houses, condominiums and apartments.

**COMMON OPEN SPACE / COMMON LAND:** Land or facilities designated for common use of the residents of the subdivision.

**COMPLETE APPLICATION:** An application shall be considered complete upon submission of the required fee and all information required by this Ordinance or by a vote by the Planning Board to waive the submission of required information.

**COMPREHENSIVE PLAN OR POLICY STATEMENT:** Any part or element of the overall plan or policy for development of the Town as defined in Title 30-A M.R.S.A., Sec. 4301.

**CONTIGUOUS LOTS:** Lots which adjoin at any line or point, or are separated by a body of water less than fifteen feet wide.

**DENSELY DEVELOPED AREA:** Refer to Appendix A

**DENSITY:** See Net Residential Density

**DEVELOPED AREA:** Any area on which a site improvement or change is made, including buildings, landscaping, parking areas, and roadways.

**DEVELOPER:** See Applicant

**DRIVEWAY:** A vehicular access-way of no more than five hundred (500) feet in length, serving no more than two dwelling units.

**DWELLING UNIT:** Any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, apartments, mobile homes and time shares.

**ENGINEERED SUBSURFACE WASTEWATER DISPOSAL SYSTEM:** A subsurface waste water disposal system designed, installed, and operated as a single unit to treat and dispose of 2,000 gallons of waste water per day or more; or any system designed to be capable of treating waste water with higher BODS and total suspended solids concentrations than domestic waste water.

**FINAL PLAN:** The final drawings, on which the Applicant's plan of subdivision is presented to the Planning Board for approval and which, if approved, must be recorded at the Sagadahoc Registry of Deeds.

**FRESHWATER WETLAND:** Areas which are inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and are not part of a great pond, coastal wetland, river, stream or brook. Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the above criteria.

**GREAT POND:** Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has surface area in excess of thirty acres, except for the purposes of these regulations, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

**HIGH INTENSITY SOIL SURVEY:** A soil survey conducted by a Certified Soil Scientist, meeting the standards of the National Cooperative Soil Survey, which identifies soil types down to 1/10 acre or less at a scale equivalent to subdivision plan submitted. The mapping units shall be the soil series. Single soil test pits at their evaluation shall not be considered to constitute high intensity soil surveys.

**HIGH WATER MARK OF COASTAL WATERS:** That line on the shore of tidal waters reached by the shoreward limit of the rise of the tides at times tidal charts published by the National Oceanic and Atmospheric Administration list 11 foot tides for Portland, said line may be determined by agreement between the Applicant and the Planning Board in consultation with the Codes Enforcement Officer. In cases where the Applicant and the Planning Board disagree, the Applicant shall submit evidence from a certified Maine surveyor establishing the 11 foot tide line, or the application shall be held in abeyance until the actual line can be determined by inspection by the Codes Enforcement Officer of an actual tide height during a non-storm period.

**HUNDRED YEAR FLOOD:** The highest level of flood that, on the average, has a one percent chance of occurring in any given year.

**MONUMENT:** Standard surveyor's monument is a steel bar with a mushroom top or as otherwise identified in accordance with the State Subdivision Law, Title 30-A M.R.S.A. Section 4406, Section 2.

**NET RESIDENTIAL ACREAGE:** The total acreage available for subdivision, and shown on the proposed subdivision plan, minus the area for roads or access and the areas which are unsuitable for development as outlined in Section 7. C.

**NET RESIDENTIAL DENSITY:** The number of single family residential dwelling units allowed within the net residential acreage.

**NORMAL HIGH WATER LINE (non-tidal waters):** That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers and great ponds that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river or great pond during the period of normal high water are considered part of the river or great pond.

**NORMAL HIGH WATER LINE (tidal waters):** It is the point of highest inland flow of the tides when the tides at Portland have a height of 11 feet. In the case of wetlands adjacent to rivers and ocean front, the normal high-water line is the upland edge of the wetland, and not the edge of open water.

**OPEN SPACE:** See common open space.

**PARKING LOT:** Shall be sized for the proposed use and shall be designed to prevent storm water runoff from flowing directly into a water body, tributary stream or wetland and where feasible, to retain all runoff on-site. In determining the appropriate size of a proposed parking lot, the following shall apply:

- a. Typical parking space: Minimum ten (10) feet wide and twenty (20) feet long.
- b. Internal travel aisles: Minimum twenty (20) feet wide

**PARKING SPACE:** One parking space shall be ten (10) feet by twenty (20) feet.

**PERMANENT MARKER:** See Monument.

**PERSON:** Includes a firm, association, organization, partnership, trust, company, corporation, or any other legal entity, as well as an individual.

**PHIPPSBURG FLOOD PLAIN ORDINANCE:** The ordinance which applies to all lands within the flood hazard areas.

**PLANNING BOARD:** The Planning Board of the Town of Phippsburg created March 14, 1970, Per Title 30 MRSA Section 4952.

**PRELIMINARY SUBDIVISION PLAN:** The preliminary drawings showing the proposed layout of the subdivision to be submitted to the Planning Board for its consideration.

**PRINCIPAL BUILDING:** The building in which the use of the lot is conducted.

**PROFESSIONAL ENGINEER:** A professional engineer, registered in the State of Maine.

**RESIDENTIAL DWELLING UNIT:** A room or suite of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes, and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not residential dwelling units.

**RESUBDIVISION:** The division of an existing subdivision or any change in the plan for an approved subdivision which affects the lot lines, including land transactions by the subdivider not indicated on the approved plan.

**ROAD:** Public and private ways such as alleys, avenues, boulevards, highways, streets, and other rights-of-way, as well as areas on subdivision plans designated as rights-of-way, except driveways.

**SKETCH PLAN:** Conceptual maps, renderings, and supportive data describing the project proposed by the Applicant for initial review prior to submitting an application for subdivision approval.

**"SPAGHETTI" LOT:** A long, narrow lot also called "flag" or "bowling alley" lot. The ratio of lot length to width shall not be more than three-to-one (3-1) for any lot.

**STRUCTURE:** Anything built for the support, shelter or enclosure of persons, animals, goods or property of any kind, together with anything constructed or erected with a fixed location on or in the ground, exclusive of fences, poles, wiring and other aerial equipment normally associated with service drops as well as guying and guy anchors. The term includes structures temporarily or permanently located, including but not limited to, decks, patios, satellite dishes, rigid framed tents and tractor trailer boxes.

**SUB-BASE:** A layer of selected material placed on the sub-grade for the support of pavement

**SUBDIVISION:** Refer to Appendix A.

**SUB-GRADE:** The soil structure upon which a road is to be built.

**SUBDIVIDER:** See Applicant

**SUBSTANTIAL START:** The completion of thirty (30) percent of the proposed improvements within the subdivision.

**TRACT OR PARCEL OF LAND:** All contiguous land in the same ownership, except that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road after September 22, 1971.

**WATERCOURSE:** A natural channel conveying water.

# Appendix A

## 30-A M.R.S.A. Sections 4401-4408 (Municipal Subdivision Law)

### § 4401. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Densely developed area. “Densely developed area” means any commercial, industrial or compact residential area of 10 or more acres with an existing density of at least one principal structure per 2 acres.
2. Dwelling unit. “Dwelling unit” means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, apartments and time-share units.

- 2-A. Freshwater wetland. “Freshwater wetland” means freshwater swamps, marshes, bogs and similar areas which are:

- A. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and
- B. Not considered part of a great pond, coastal wetland, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria of this subsection.

- 2-B. Farmland. “Farmland” means a parcel consisting of 5 or more acres of land that is:

- A. Classified as prime farmland, unique farmland or farmland of statewide or local importance by the Natural Resources Conservation Service within the United States Department of Agriculture; or
- B. Used for production of agricultural products as defined in Title 7, section 152, subsection 2.

3. Principal structure. “Principal structure” means any building or structure in which the main use of the premises takes place.

4. Subdivision. “Subdivision” means the division of a tract or parcel of land into 3 or more lots within any 5-year period that begins on or after September 23, 1971. This definition applies whether the division is accomplished by sale, lease, development, buildings or otherwise. The term “subdivision” also includes the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period, the construction or placement of 3 or more dwelling units on a single tract or parcel of land and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period.
- A. In determining whether a tract or parcel of land is divided into 3 or more lots, the first dividing of the tract or parcel is considered to create the first 2 lots and the next dividing of either of these first 2 lots, by whomever accomplished, is considered to create a 3rd lot, unless:
- (1) Both dividings are accomplished by a subdivider who has retained one of the lots for the subdivider’s own use as a single-family residence that has been the subdivider’s principal residence for a period of at least 5 years immediately preceding the 2nd division; or
  - (2) The division of the tract or parcel is otherwise exempt under this subchapter.
- B. The dividing of a tract or parcel of land and the lot or lots so made, which dividing or lots when made are not subject to this subchapter, do not become subject to this subchapter by the subsequent dividing of that tract or parcel of land or any portion of that tract or parcel. The municipal reviewing authority shall consider the existence of the previously created lot or lots in reviewing a proposed subdivision created by a subsequent dividing.
- C. A lot of 40 or more acres must be counted as a lot, except:
- (2) When a municipality has, by ordinance, or the municipal reviewing authority has, by regulation, elected not to count lots of 40 or more acres as lots for the purposes of this subchapter when the parcel of land being divided is located entirely outside any shoreland area as defined in Title 38, section 435, or a municipality’s shoreland zoning ordinance.
- D-1. A division accomplished by devise does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
- D-2. A division accomplished by condemnation does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
- D-3. A division accomplished by order of court does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-4. A division accomplished by gift to a person related to the donor of an interest in property held by the donor for a continuous period of 5 years prior to the division by gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person not related to the donor of the exempt real estate as provided in this paragraph, then the previously exempt division creates a lot or lots for the purposes of this subsection. "Person related to the donor" means a spouse, parent, grandparent, brother, sister, child or grandchild related by blood, marriage or adoption. A gift under this paragraph can not be given for consideration that is more than ½ the assessed value of the real estate.

D-5. A division accomplished by a gift to a municipality if that municipality accepts the gift does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.

D-6. A division accomplished by the transfer of any interest in land to the owners of land abutting that land does not create a lot or lots for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter. If the real estate exempt under this paragraph is transferred within 5 years to another person without all of the merged land, then the previously exempt division creates a lot or lots for the purposes of this subsection.

E. The division of a tract or parcel of land into 3 or more lots and upon each of which lots permanent dwelling structures legally existed before September 23, 1971 is not a subdivision.

F. In determining the number of dwelling units in a structure, the provisions of this subsection regarding the determination of the number of lots apply, including exemptions from the definition of a subdivision of land.

G. Notwithstanding the provisions of this subsection, leased dwelling units are not subject to subdivision review if the municipal reviewing authority has determined that the units are otherwise subject to municipal review at least as stringent as that required under this subchapter.

H-1. This subchapter may not be construed to prevent a municipality from enacting an ordinance under its home rule authority that:

- (1) Expands the definition of "subdivision" to include the division of a structure for commercial or industrial use; or

(2) Otherwise regulates land use activities.

A municipality may not enact an ordinance that expands the definition of “subdivision” except as provided in this subchapter. A municipality that has a definition of “subdivision” that conflicts with the requirements of this subsection at the time this paragraph takes effect shall comply with this subsection no later than January 1, 2006. Such a municipality must file its conflicting definition at the county registry of deeds by June 30, 2003 for the definition to remain valid for the grace period ending January 1, 2006. A filing required under this paragraph must be collected and indexed in a separate book in the registry of deeds for the county in which the municipality is located.

- I. The grant of a bona fide security interest in an entire lot that has been exempted from the definition of subdivision under paragraphs D-1 to D-6, or subsequent transfer of that entire lot by the original holder of the security interest or that person’s successor in interest, does not create a lot for the purposes of this definition, unless the intent of the transferor is to avoid the objectives of this subchapter.
5. New structure or structures. “New structure or structures” includes any structure for which construction begins on or after September 23, 1988. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this subchapter.
6. Tract or parcel of land. “Tract or parcel of land” means all contiguous land in the same ownership, except that lands located on opposite sides of a public or private road are considered each a separate tract or parcel of land unless the road was established by the owner of land on both sides of the road after September 22, 1971.
7. Outstanding river segments. In accordance with Title 12, section 402, “outstanding river segments” means:
  - A. The Aroostook River from the Canadian border to the Masardis and T.10, R.6, W.E.L.S. town line, excluding the segment in T.9, R.5, W.E.L.S.;
  - B. The Carrabassett River from the Kennebec River to the Carrabassett Valley and Mt. Abram Township town line;
  - C. The Crooked River from its inlet into Sebago Lake to the Waterford and Albany Township town line;
  - D. The Damariscotta River from the Route 1 bridge in Damariscotta to the dam at Damariscotta Mills;
  - E. The Dennys River from the Route 1 bridge to the outlet of Meddybemps Lake, excluding the western shore in Edmunds Township and No. 14 Plantation;



- F. The East Machias River, including the Maine River, from 1/4 of a mile above the Route 1 bridge to the East Machias and T.18, E.D., B.P.P. town line, from the T.19, E.D., B.P.P. and Wesley town line to the outlet of Crawford Lake, and from the No. 21 Plantation and Alexander town line to the outlet of Pocomoonshine Lake, excluding Hadley Lake, Lower Mud Pond and Upper Mud Pond;
- G. The Fish River from the bridge at Fort Kent Mills to the Fort Kent and Wallagrass Plantation town line, from the T.16, R.6, W.E.L.S. and Eagle Lake town line to the Eagle Lake and Winterville Plantation town line, and from the T.14, R.6, W.E.L.S. and Portage Lake town line to the Portage Lake and T.13, R.7, W.E.L.S. town line, excluding Portage Lake;
- H. The Kennebago River from its inlet into Cupsuptic Lake to the Rangeley and Lower Cupsuptic Township town line;
- I. The Kennebec River from Thorns Head Narrows in North Bath to the Edwards Dam in Augusta, excluding Perkins Township, and from the Route 148 bridge in Madison to the Caratunk and The Forks Plantation town line, excluding the western shore in Concord Township, Pleasant Ridge Plantation and Carrying Place Township and excluding Wyman Lake;
- J. The Machias River from the Route 1 bridge to the Northfield and T.19, M.D., B.P.P. town line;
- K. The Mattawamkeag River from the Penobscot River to the Mattawamkeag and Kingman Township town line, and from the Reed Plantation and Bancroft town line to the East Branch in Haynesville;
- L. The Narraguagus River from the ice dam above the railroad bridge in Cherryfield to the Beddington and Devereaux Township town lines, excluding Beddington Lake;
- M. The Penobscot River, including the Eastern Channel, from Sandy Point in Stockton Springs to the Veazie Dam and its tributary the East Branch of the Penobscot from the Penobscot River to the East Millinocket and Grindstone Township town line;
- N. The Piscataquis River from the Penobscot River to the Monson and Blanchard Plantation town line;
- O. The Pleasant River from the bridge in Addison to the Columbia and T.18, M.D., B.P.P. town line, and from the T.24, M.D., B.P.P. and Beddington town line to the outlet of Pleasant River Lake;
- P. The Rapid River from the Magalloway Plantation and Upton town line to the outlet of Pond in the River;
- Q. The Saco River from the Little Ossipee River to the New Hampshire border;

- R. The St. Croix River from the Route 1 bridge in Calais to the Calais and Baring Plantation town line, from the Baring Plantation and Baileyville town line to the Baileyville and Fowler Township town line, and from the Lambert Lake Township and Vanceboro town line to the outlet of Spednik Lake, excluding Woodland Lake and Grand Falls Flowage;
- S. The St. George River from the Route 1 bridge in Thomaston to the outlet of Lake St. George in Liberty, excluding White Oak Pond, Seven Tree Pond, Round Pond, Sennebec Pond, Trues Pond, Stevens Pond and Little Pond;
- T. The St. John River from the Van Buren and Hamlin Plantation town line to the Fort Kent and St. John Plantation town line, and from the St. John Plantation and St. Francis town line to the Allagash and St. Francis town line;
- U. The Sandy River from the Kennebec River to the Madrid and Township E town line;
- V. The Sheepscot River from the railroad bridge in Wiscasset to the Halldale Road in Montville, excluding Long Pond and Sheepscot Pond, including its tributary the West Branch of the Sheepscot from its confluence with the Sheepscot River in Whitefield to the outlet of Branch Pond in China;
- W. The West Branch of the Pleasant River from the East Branch in Brownville to the Brownville and Williamsburg Township town line; and
- X. The West Branch of the Union River from the Route 181 bridge in Mariaville to the outlet of Great Pond in the Town of Great Pond.

## **§ 4402. Exceptions**

This subchapter does not apply to:

1. Previously approved subdivisions. Proposed subdivisions approved by the planning board or the municipal officials before September 23, 1971 in accordance with laws then in effect;
2. Previously existing subdivisions. Subdivisions in actual existence on September 23, 1971 that did not require approval under prior law;
3. Previously recorded subdivisions. A subdivision, a plan of which had been legally recorded in the proper registry of deeds before September 23, 1971;
4. Airports with an approved airport layout plan. Any airport with an airport layout plan that has received final approval from the airport sponsor, the Department of Transportation and the Federal Aviation Administration; or
5. Subdivisions in existence for at least 20 years. A subdivision in violation of this subchapter that has been in existence for 20 years or more, except a subdivision:
  - A. That has been enjoined pursuant to section 4406;
  - B. For which approval was expressly denied by the municipal reviewing authority, and record of the denial was recorded in the appropriate registry of deeds;
  - C. For which a lot owner was denied a building permit under section 4406, and record of the denial was recorded in the appropriate registry of deeds; or
  - D. That has been the subject of an enforcement action or order, and record of the action or order was recorded in the appropriate registry of deeds.

## **§ 4403. Municipal review and regulation**

This section governs municipal review of proposed subdivisions.

1. Municipal reviewing authority. The municipal reviewing authority shall review all requests for subdivision approval. On all matters concerning subdivision review, the municipal reviewing authority shall maintain a permanent record of all its meetings, proceedings and correspondence.
- 1-A. Joint meetings. If any portion of a subdivision crosses municipal boundaries, all meetings and hearings to review the application must be held jointly by the reviewing authorities from each municipality. All meetings and hearings to review an application under section 4407 for a revision or amendment to a subdivision that crosses municipal boundaries must be held jointly by the reviewing authorities from each municipality. In addition to other review criteria, the reviewing authorities shall consider and make a finding of fact regarding the criteria described in section 4404, subsection 19.

The reviewing authorities in each municipality, upon written agreement, may waive the requirement under this subsection for any joint meeting or hearing.

2. Regulations; review procedure. The municipal reviewing authority may, after a public hearing, adopt, amend or repeal additional reasonable regulations governing subdivisions which shall control until amended, repealed or replaced by regulations adopted by the municipal legislative body. The municipal reviewing authority shall give at least seven (7) days' notice of this hearing.
  - A. The regulations may provide for a multi-stage application or review procedure consisting of no more than three (3) stages:
    - (1) Preapplication sketch plan;
    - (2) Preliminary plan; and
    - (3) Final plan.

Each stage must meet the time requirements of subsections 4 and 5.

3. Application; notice; completed application. This subsection governs the procedure to be followed after receiving an application for a proposed subdivision.
  - A. When an application is received, the municipal reviewing authority shall give a dated receipt to the applicant and shall notify by mail all abutting property owners of the proposed subdivision, and the clerk and the reviewing authority of municipalities that abut or include any portion of the subdivision, specifying the location of the proposed subdivision and including a general description of the project. The municipal reviewing authority shall notify by mail a public drinking water supplier if the subdivision is within its source water protection area.

- B. Within 30 days after receiving an application, the municipal reviewing authority shall notify the applicant in writing either that the application is complete or, if the application is incomplete, the specific additional material needed to complete the application.
  - C. After the municipal reviewing authority has determined that a complete application has been filed, it shall notify the applicant and begin its full evaluation of the proposed subdivision.
  - D. The municipal reviewing authority may not accept or approve final plans or final documents prepared within the meaning and intent of Title 32, chapter 141 that are not sealed and signed by the professional land surveyor under whose responsible charge they were completed, as provided in Title 32, section 18226.
4. Public hearing; notice. If the municipal reviewing authority decides to hold a public hearing on an application for subdivision approval, it shall hold the hearing within 30 days after determining it has received a complete application. The municipal reviewing authority shall have notice of the date, time and place of the hearing:
- A. Given to the applicant; and
  - B. Published, at least two (2) times, in a newspaper having general circulation in the municipality in which the subdivision is proposed to be located. The date of the first publication must be at least seven (7) days before the hearing.
5. Decision; time limits. The municipal reviewing authority shall, within 30 days of a public hearing or, if no hearing is held, within 60 days of determining it has received a complete application or within any other time limit that is otherwise mutually agreed to, issue an order:
- A. Denying approval of the proposed subdivision;
  - B. Granting approval of the proposed subdivision; or
  - C. Granting approval upon any terms and conditions that it considers advisable to:
    - (1) Satisfy the criteria listed in section 4404;
    - (2) Satisfy any other regulations adopted by the reviewing authority; and
    - (3) Protect and preserve the public's health, safety and general welfare.

6. Burden of proof; findings of fact. In all instances, the burden of proof is upon the person proposing the subdivision. In issuing its decision, the reviewing authority shall make findings of fact establishing that the proposed subdivision does or does not meet the criteria described in subsection 5.
7. Conditioned on variance. If the initial approval or any subsequent amendment of a subdivision is based in part on the granting of a variance, the subdivider must comply with section 4406, subsection 1, paragraph B.

#### **§ 4404. Review criteria**

When adopting any subdivision regulations and when reviewing any subdivision for approval, the municipal reviewing authority shall consider the following criteria and, before granting approval, must determine that:

1. Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:
  - A. The elevation of the land above sea level and its relation to the flood plains;
  - B. The nature of soils and subsoils and their ability to adequately support waste disposal;
  - C. The slope of the land and its effect on effluents;
  - D. The availability of streams for disposal of effluents; and
  - E. The applicable state and local health and water resource rules and regulations;
2. Sufficient water. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;
3. Municipal water supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;
4. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;
5. Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway located outside the urban compact area of an urban compact municipality as defined by Title 23, section 754, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to Title 23, section 704 and any rules adopted under that section;
6. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services if they are utilized;
7. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;

8. Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;
9. Conformity with local ordinances and plans. The proposed subdivision conforms with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;
10. Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section;
11. Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of that body of water.
  - A. When lots in a subdivision have frontage on an outstanding river segment, the proposed subdivision plan must require principal structures to have a combined lot shore frontage and setback from the normal high-water mark of 500 feet.
    - (1) To avoid circumventing the intent of this provision, whenever a proposed subdivision adjoins a shoreland strip narrower than 250 feet which is not lotted, the proposed subdivision shall be reviewed as if lot lines extended to the shore.
    - (2) The frontage and set-back provisions of this paragraph do not apply either within areas zoned as general development or its equivalent under shoreland zoning, Title 38, chapter 3, subchapter I, article 2-B, or within areas designated by ordinance as densely developed. The determination of which areas are densely developed must be based on a finding that existing development met the definitional requirements of section 4401, subsection 1, on September 23, 1983;
12. Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;



13. Flood areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;
14. Freshwater wetlands. All freshwater wetlands within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district;
- 14-A. Farmland. All farmland within the proposed subdivision has been identified on maps submitted as part of the application. Any mapping of farmland may be done with the help of the local soil and water conservation district;
15. River, stream or brook. Any river, stream or brook within or abutting the proposed subdivision has been identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38, section 480-B, subsection 9;
16. Storm water. The proposed subdivision will provide for adequate storm water management;
17. Spaghetti-lots prohibited. If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond or coastal wetland as these features are defined in Title 38, section 480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than 5 to 1;
18. Lake phosphorus concentration. The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision; and
19. Impact on adjoining municipality. For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

20. Lands subject to liquidation harvesting. Timber on the parcel being subdivided has not been harvested in violation of rules adopted pursuant to Title 12, section 8869, subsection 14. If a violation of rules adopted by the Maine Forest Service to substantially eliminate liquidation harvesting has occurred, the municipal reviewing authority must determine prior to granting approval for the subdivision that 5 years have elapsed from the date the landowner under whose ownership the harvest occurred acquired the parcel. A municipal reviewing authority may request technical assistance from the Department of Agriculture, Conservation and Forestry, Bureau of Forestry to determine whether a rule violation has occurred, or the municipal reviewing authority may accept a determination certified by a forester licensed pursuant to Title 32, chapter 76. If a municipal reviewing authority requests technical assistance from the bureau, the bureau shall respond within 5 working days regarding its ability to provide assistance. If the bureau agrees to provide assistance, it shall make a finding and determination as to whether a rule violation has occurred. The bureau shall provide a written copy of its finding and determination to the municipal reviewing authority within 30 days of receipt of the municipal reviewing authority's request. If the bureau notifies a municipal reviewing authority that the bureau will not provide assistance, the municipal reviewing authority may require a subdivision applicant to provide a determination certified by a licensed forester.

For the purposes of this subsection, "liquidation harvesting" has the same meaning as in Title 12, section 8868, subsection 6 and "parcel" means a contiguous area within one municipality, township or plantation owned by one person or group of persons in common or joint ownership. This subsection takes effect on the effective date of rules adopted pursuant to Title 12, section 8869, subsection 14.

#### **§ 4405. Access to direct sunlight**

The municipal reviewing authority may, to protect and ensure access to direct sunlight for solar energy systems, prohibit, restrict or control development through subdivision regulations. The regulations may call for subdivision development plans containing restrictive covenants, height restrictions, side yard and set-back requirements or other permissible forms of land use controls.

## **§ 4406. Enforcement; prohibited activities**

The Attorney General, the municipality or the planning board of any municipality may institute proceedings to enjoin a violation of this subchapter.

1. Sales or other conveyances. No person may sell, lease, develop, build upon or convey for consideration, or offer or agree to sell, lease, develop, build upon or convey for consideration any land or dwelling unit in a subdivision that has not been approved by the municipal reviewing authority of the municipality where the subdivision is located and approved under Title 38, chapter 3, subchapter I, article 6, where applicable, and subsequently recorded in the proper registry of deeds.
  - A. No register of deeds may record any subdivision plat or plan that has not been approved under this subchapter. Approval for the purpose of recording must appear in writing on the plat or plan. All subdivision plats and plans required by this subchapter must contain the name and address of the person under whose responsibility the subdivision plat or plan was prepared.
  - B. Whenever the initial approval or any subsequent amendment of a subdivision is based in part on the granting of a variance from any applicable subdivision approval standard, that fact must be expressly noted on the face of the subdivision plan to be recorded in the registry of deeds.
    - (1) In the case of an amendment, if no amended plan is to be recorded, a certificate must be prepared in recordable form and recorded in the registry of deeds. This certificate must:
      - (a) Indicate the name of the current property owner;
      - (b) Identify the property by reference to the last recorded deed in its chain of title; and
      - (c) Indicate the fact that a variance, including any conditions on the variance, has been granted and the date of the granting.
    - (2) The variance is not valid until recorded as provided in this paragraph. Recording must occur within 90 days of the final subdivision approval or approval under Title 38, chapter 3, subchapter I, article 6, where applicable, whichever date is later, or the variance is void.
  - B-1. Whenever the subdivision is exempt from Title 38, chapter 3, subchapter I, article 6, because of the operation of Title 38, section 488, subsection 5, that fact must be expressly noted on the face of the subdivision plan to be recorded in the registry of deeds. The developable land, as defined in Title 38, section 488, subsection 5, must be indicated on the plan. The person submitting the plan for recording shall prepare a sworn certificate in recordable form and record it in the registry of deeds. This certificate must:

- (1) Indicate the name of the current property owner;
- (2) Identify the property by reference to the last recorded deed in its chain of title and by reference to the subdivision plan;
- (3) Indicate that an exemption from Title 38, chapter 3, subchapter I, article 6, has been exercised;
- (4) Indicate that the requirements of Title 38, section 488, subsection 5, have been and will be satisfied; and
- (5) Indicate the date of notification of the Department of Environmental Protection under Title 38, section 488, subsection 5.

The exemption is not valid until recorded as provided in this paragraph. Recording must occur within 90 days of the final subdivision approval under this subchapter or the exemption is void.

- C. A building official may not issue any permit for a building or use within a land subdivision unless the subdivision has been approved under this subchapter and under Title 38, chapter 3, subchapter I, article 6, where applicable.
- D. Any person who sells, leases, develops, builds upon, or conveys for consideration, offers or agrees to sell, lease, develop, build upon or convey for consideration any land or dwelling unit in a subdivision that has not been approved under this subchapter and under Title 38, chapter 3, subchapter I, article 6, where applicable, shall be penalized in accordance with section 4452.
- E. Any person who, after receiving approval from the municipal reviewing authority or approval under Title 38, chapter 3, subchapter I, article 6 and recording the plan at the registry of deeds, constructs or develops the subdivision or transfers any lot in a manner other than depicted on the approved plans or amendments or in violation of any condition imposed by the municipal reviewing authority or the Department of Environmental Protection, when applicable, must be penalized in accordance with section 4452.
- F. Any person who sells, leases or conveys for consideration any land or dwelling unit in a subdivision approved under this subchapter and exempt from Title 38, chapter 3, subchapter I, article 6, because of the operation of Title 38, section 488, subsection 5, shall include in the instrument of sale, lease or conveyance a covenant to the transferee that all of the requirements of Title 38, section 488, subsection 5, have been and will be satisfied.

2. Permanent marker required. No person may sell or convey any land in an approved subdivision unless at least one permanent marker is set at one lot corner of the lot sold or conveyed. The term “permanent marker” includes, but is not limited to, the following:
  - A. A granite monument;
  - B. A concrete monument;
  - C. An iron pin; or
  - D. A drill hole in ledge.
3. Utility installation. A public utility, water district, sanitary district or any utility company of any kind may not install services to any lot or dwelling unit in a subdivision, unless written authorization attesting to the validity and currency of all local permits required under this chapter has been issued by the appropriate municipal officials or other written arrangements have been made between the municipal officers and the utility, except that if a public utility, water district, sanitary district or utility company of any kind has installed services to a lot or dwelling unit in a subdivision in accordance with this subsection, a subsequent public utility, water district, sanitary district or utility company of any kind may install services to the lot or dwelling unit in a subdivision without first receiving written authorization pursuant to this section.
4. Permit display. A person issued a permit pursuant to this subchapter in a great pond watershed shall have a copy of the permit on site while work authorized by the permit is being conducted.

#### **§ 4407. Revisions to existing plat or plan**

Any application for subdivision approval which constitutes a revision or amendment to a subdivision plan which has been previously approved shall indicate that fact on the application and shall identify the original subdivision plan being revised or amended. In reviewing such an application, the municipal reviewing authority shall make findings of fact establishing that the proposed revisions do or do not meet the criteria of section 4404.

1. Recording. If a subdivision plat or plan is presented for recording to a register of deeds and that plat or plan is a revision or amendment to an existing plat or plan, the register shall:
  - A. Indicate on the index for the original plat or plan that it has been superseded by another plat or plan;
  - B. Reference the book and page or cabinet and sheet on which the new plat or plan is recorded; and
  - C. Ensure that the book and page or cabinet and sheet on which the original plat or plan is recorded is referenced on the new plat or plan.

**§ 4408. Recording upon approval**

Upon approval of a subdivision plan, plat or document under section 4403, subsection 5, a municipality may not require less than 90 days for the subdivision plan, plat or document to be recorded in the registry of deeds.



**TOWN LANDS MANAGEMENT ORDINANCE  
TOWN OF PHIPPSBURG May 2004**

1. **AUTHORITY:** This ordinance is adopted under the home rule powers provided the Town of Phippsburg by the Maine Legislature (Title 30, M.R.S.A. Section 1917.) This ordinance may be amended by a majority vote of residents at a Town Meeting.
2. **PURPOSE:** This ordinance is designed to protect and enhance citizen use and enjoyment of important parcels of publicly owned land in Phippsburg.
3. **ADMINISTRATION:** The Board of Selectmen, with the advice of the Town Lands Management Committee, may adopt regulations to carry out the provisions of this ordinance, and may appoint or designate an agent or agents to ensure that the requirements of this ordinance are enforced.
4. **COMMITTEE MEMBERSHIP:** The Board of Selectmen shall appoint a seven member Town Lands Management Committee, for staggered terms of three years.  
When possible, the membership of the board will be as follows:
  - One member shall be selected from persons nominated by the Phippsburg Recreation Commission
  - One member shall be selected from persons nominated by the Phippsburg Sportsman's Club
  - One member shall be selected from persons nominated by the Phippsburg Conservation Commission
  - One member shall be selected from persons nominated by the Phippsburg Land TrustThree members shall be appointed at large from among the citizens of the Town of Phippsburg.
5. **COMMITTEE DUTIES:** The Committee shall:
  - A. Recommend to the Board of Selectmen those town properties with particular value for public recreation, forest management or other public uses.
  - B. Manage those parcels of Town owned property assigned to it for management by the Phippsburg Board of Selectmen.
  - C. Develop regulations for the management of the assigned town owned lands. Such rules and regulations shall be adopted only after a public meeting which is advertised at least one week in advance. At this meeting affected citizens shall be provided with opportunities to speak and express their views. Adopted rules and regulations shall be posted at the Phippsburg Town Office.
  - D. Prepare a budget for consideration at the Annual Town Meeting.
  - E. Submit a committee report for the Annual Town Report.

6. **REGULATIONS FOR ALL ASSIGNED TOWN OWNED LANDS:** The following rules and regulations apply to all Town Owned Lands:

A. Except where prohibited by federal, state or local regulations, all assigned lands shall be open for hunting, fishing where available, walking, sight seeing, and other low impact public recreation activities.

B. Trails shall be constructed only after their location and construction has been reviewed and approved by the committee.

C. ATV, hiking, and other trails shall be constructed so as to minimize soil erosion.

D. ATV use shall be prohibited between April 1 and May 15, unless the committee finds that conditions have dried enough to minimize damage to the land.

E. Federal and state game laws shall be observed.

F. Contained cooking devices, such as BBQ grills, are allowed. A Fire Permit must be obtained for an open fire.

G. Town Lands will be open from daylight to dark.

H. Overnight camping will be allowed with permission of this committee.

I. Trash will be carry in – carry out except for the Totman Preserve.

J. Park in designated areas only.

K. Obey the speed limits as posted.

7. **SPECIFIC RULES FOR TOTMAN PRESERVE:** The following rules apply to the use of the Totman Preserve:

A. Use of the Totman Preserve is limited to Phippsburg residents, taxpayers and their guests. A guest is defined as an individual who is staying with a Phippsburg resident or Phippsburg taxpayer or is renting a campsite, room or cottage from a business located in Phippsburg. Whereas, Totman Preserve is a limited resource with respect to usable area and parking, and is in a fragile conservation area, and the Town has purchased and developed the Preserve without any state or federal moneys, and more than ninety percent of all shore frontage in the Town is owned by nonresidents, and there are three other beaches (Popham State Park, Morse Mountain, and Head Beach) available to everyone regardless of residency or taxpayer status, and other Town owned and Land Trust lands are available to everyone regardless of residency or taxpayer status, it shall be the intent of this ordinance to restrict the use of the Totman Preserve to Phippsburg residents, Phippsburg taxpayers and guests staying at their properties.

B. Preserve Hours – The Preserve will be open from sunrise to sunset. The inner gate will be open from 8:00 a.m. to sunset from April 15<sup>th</sup> to November 1<sup>st</sup> and closed the rest of the year.

C. Parking - Phippsburg residents and taxpayers must display a current Transfer Station/Town Lands Use permit on their vehicle in order to park at the Preserve. Guests must obtain a temporary parking permit at the Town Office during normal working hours which must be displayed on the dashboard of the parked vehicle. Businesses who rent campsites, rooms or cottages may obtain reusable annual permits for daily issuance to their guests. Parking is only allowed in designated areas.

D. Trash shall be disposed of in the appropriate containers.

E. Open fires on the beach are not allowed.

F. Pedestrian walking and hiking trails may be designed and constructed with the approval of this committee.

G. Horse and pack animals shall be prohibited within 250 feet of water bodies and on trails constructed for pedestrian use. However, equestrian trails may be constructed with the approval of this committee.

8. **RESPONSIBILITY AND LIABILITY:** Persons using any town owned property assigned for management do so at their own risk. The Town of Phippsburg shall not be responsible for any accidents or injury to persons that occur on these properties.

9. **ENFORCEMENT AND PENALTY:**

A. It shall be the duty of the Phippsburg Police Department, Board of Selectmen or their designees to enforce the provisions of this ordinance.

B. The Board of Selectmen is authorized to institute any or all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines that may be necessary to enforce this ordinance in the name of the Town of Phippsburg.

C. Any person who violates any provision of this ordinance shall be guilty of a civil violation subject to a penalty of between \$50 and \$1,000 for each violation. All fines levied under this ordinance shall be paid to the Town of Phippsburg. Persons found guilty of violating this ordinance also shall be liable for the Town's attorney's fees and costs.

10. **SALE OF PROPERTY:** The Board of Selectmen shall not negotiate for the sale, lease or disposal of lands assigned to the Committee for management without first notifying the Committee. Nor shall an article for the sale, lease or disposal of such lands

be submitted for a town vote without the Committee's recommendation being included on the town meeting warrant.

11. **APPEALS:** Any persons aggrieved by decisions of the Committee may appeal to the Phippsburg Board of Selectmen

12. **EFFECTIVE DATE:** This Ordinance shall become effective after its adoption at the May, 2004 Town Meeting and will stay in effect until repealed or replaced. Any other Ordinance concerning the use of Town owned property is hereby repealed.

13. **SEPARABILITY:** If any section, subsection, sentence or part of this Ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Ordinance.

Given under our hands this 12<sup>th</sup> day of May, 2004.

PROCTOR W. WELLS  
Chair, Board of Selectmen

MICHAEL W. RICE  
Board of Selectmen

ALAN B. DOUGLASS  
Board of Selectmen

Attest: Betty Herron  
Town Clerk, Town of Phippsburg

**TOWN LANDING ORDINANCE**  
**TOWN OF PHIPPSBURG, May 1999**  
**Amended through May 7, 2013**

1. **AUTHORITY:** This ordinance is enacted in accordance with Title 30, M.R.S.A. Section 1917, and repeals and replaces in their entirety the “Town Landing Ordinances” enacted March 29, 1986 and March 14, 1988. This ordinance may be amended by a majority vote of residents at a Town Meeting.

2. **PURPOSE:** Since the Town of Phippsburg is a peninsula almost entirely surrounded by water and has had a long history of commercial and recreational use of its tidal waters, it shall be the purpose of this ordinance to ensure that all the Town Landings are available for use in a fair and equitable manner. The Town has had several public landings for many years, has in recent years developed new ones, and may, subject to Town approval, develop new ones in the future. Furthermore, this ordinance also seeks to avoid conflicts with adjacent property owners and neighbors, thereby helping to preserve public support for town landings. Whereas, there historically have been large numbers of Phippsburg families deriving their incomes from the sea which continues today, and the town landings are a limited resource with respect to usable area and parking, and the Town has purchased and developed its landings without any state or federal moneys, and all landings are located in noise and traffic sensitive residential areas, and more than ninety percent of all shore frontage in the Town is owned by nonresidents, and there are two state-owned landings (Fiddlers Reach and Popham pier) available to everyone regardless of residency or taxpayer status, it shall be the intent of this ordinance to restrict the use of all Town-owned landings to Phippsburg residents, Phippsburg taxpayers and guests staying at their properties.

3. **ADMINISTRATION:** The Board of Selectmen, with the advice of the Town Landing Committee, may adopt rules and regulations to carry out the provisions of this ordinance, and may appoint or designate an agent or agents to ensure that the requirements of this ordinance are enforced. Such rules and regulations adopted by the Selectmen shall be limited to:

A. Designating parking areas and permits needed to ensure that town landing facilities are available to all entitled users.

B. Taking measures to protect the landing areas from damage, vandalism, and to ensure that all landing areas are used so as to minimize or control excessive noise, nighttime use, or other public nuisance.

C. Ensuring that watercraft do not unreasonably block access to any Town Landing, whether a pier, boat ramp, or undeveloped site.

D. Preventing commercial business activities from interfering with the use of these facilities by Phippsburg residents, Phippsburg taxpayers and their guests, while protecting the right of resident and taxpaying commercial marine harvesters to use landing facilities in compliance with this ordinance.

E. Restricting the use of all Town Landings, with the exception of the pier at Popham, to Phippsburg residents, Phippsburg taxpayers and their guests. A guest is defined as an individual who is staying with a Phippsburg resident or Phippsburg taxpayer or is renting a campsite, room or cottage from a business located in Phippsburg.

4. **TOWN LANDING COMMITTEE**: The Board of Selectmen shall appoint a five member Town Landing Committee, for staggered terms of three years, whose responsibility it shall be to review town landing needs and to advise the Board of Selectmen of such needs, and to inform the townspeople at any regular or special Town Meeting of the status of the town landings. At least two members of the Town Landing Committee shall be persons who earn a substantial portion of their income from commercial marine harvesting.

5. **APPLICABILITY AND RULES**: The following rules shall apply to all Town Landings, town rights-of-way leading to the water, and all town-owned and town-leased land and facilities used for access to the water or for recreation, except as otherwise noted:

A. The use of landing facilities after 10 p.m. and before 7 a.m. shall be restricted to fishing activities and the launching and landing of boats. During these nighttime hours the use of radios, loud talking or other loud noise shall be prohibited. This restriction shall not apply to the noise of boats or vehicles equipped with mufflers in good operating condition.

B. If landing facilities covered by this ordinance are located within 1000 feet of a residential dwelling, all music, yelling or other noise loud enough to unreasonably disturb neighboring residents shall be prohibited.

C. No landing facility shall be used to provide regular mainland parking for island residents.

D. No fires of any kind, including barbecues, shall be kindled without the appropriate permit from the Town Fire Warden and the approval of the Selectmen.

E. No person shall place or maintain at or on any Town Landing any barrels, boxes, gear, traps, nets, sails, equipment, or other materials longer than is necessary for the prompt loading or unloading of the same. In no case shall such materials be left on or tied to any pier when the person responsible for such materials is not present. Temporary storage of materials on the town-owned land of the landing facility shall be limited to areas designated for such use by the Board of Selectmen, or their agent, with the advice of the Town Landing Committee, and such materials shall not remain longer than necessary, and in no case for longer than one week. No person shall deposit or leave rubbish, garbage or litter of any kind at any landing facility or on adjacent land, whether town-owned or leased, or privately owned, except that such materials may be placed in the appropriate trash receptacles if so provided.

F. No person shall sweep or cause to be deposited on any Town Landing property or into the marine waters any gasoline, oil, noxious chemicals, sewage, contaminated bilge

water, ashes, dirt, stones, gravel, mud, logs, brush, building materials, bottles, cans, paints, or other liquid or solid wastes that float on, dissolves in, or otherwise pollutes the water, obstructs navigation or decreases water depth.

G. Parking along access roads shall be done in such a manner that it will not impede the free flow of traffic, and will not block access to driveways or entrances to other roads.

6. **RESPONSIBILITY AND LIABILITY:**

A. Persons using any town landing facility do so at their own risk. The Town of Phippsburg shall not be responsible for accidents that occur on or at any facility or for damage to boats or injury to persons using any facility.

B. Persons landing or docking watercraft or using vehicles at town landing facilities shall be responsible for repairing any damage that may occur to the facility as a result of their use. Said damage shall be repaired under the direction of the Board of Selectmen and by such persons as the Selectmen may choose with all costs to be borne by those responsible for the damage.

C. The Town does not certify that any pier, whether at Sebasco or anywhere else, is safe for motor vehicles. All vehicles are driven onto the pier at the owner's risk. No vehicle larger than a three-quarter ton pickup shall be driven onto the Sebasco pier.

D. The Town does not certify the safety or lifting capacity of the boom at the Popham pier. All use of the boom shall be at the user's risk. No load greater than 200 pounds shall be lifted.

7. **SELLING:**

A. The Selectmen shall designate an area or areas where state licensed wholesale marine products dealers may park for the purpose of purchasing or picking up fish or other marine products. No buildings or other structures may be built or left at any facility for such wholesale activities. Dealer vehicles may be parked only when boats with marine products to sell are actively loading or unloading their product or when such activity can reasonably be expected to occur within one hour.

B. The establishment of retail fish or other marine product businesses at or on any town landing facility is prohibited. This provision shall not, however, prohibit the casual sale of marine products by the harvester to the public at any town landing facility.

8. **UNATTENDED WATERCRAFT:** No boat or other watercraft shall be left unattended while tied or fastened to the pier, except as otherwise posted at the Popham pier.

9. **PARKING:** At all Phippsburg Landing facilities all unattended vehicles shall have a current, valid Phippsburg "Transfer Station and Town Landing Permit" decal attached to the lower left inside corner of the vehicle windshield. Furthermore, the Selectmen may designate areas for vehicle parking by persons using any landing facility. Daily

unattended parking shall be allowed while the driver of the vehicle is using watercraft. Selectmen may designate areas for longer term parking for use by commercial marine harvesters who are going to be at sea for longer than 24 hours.

**10. ENFORCEMENT AND PENALTY:**

A. It shall be the duty of the Board of Selectmen and the Phippsburg Police to enforce the provisions of this ordinance.

B. The Board of Selectmen are authorized to institute any or all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines that may be necessary to enforce this ordinance in the name of the Town of Phippsburg.

C. Any person who violates any provision of this ordinance shall be guilty of a civil violation subject to a penalty of between \$50 and \$500 for each violation. All fines levied under this ordinance shall be paid to the Town of Phippsburg. Persons found guilty of violating this ordinance also shall be liable for the Town's attorney's fees and costs.

**11. EFFECTIVE DATE:** This Ordinance shall become effective after it's adoption at the May 18/19 1999 Town Meeting and will stay in effect until repealed or replaced. Any other Ordinance concerning the use of the Town Landings is hereby repealed.

**12. SEPARABILITY:** If any section, subsection, sentence or part of this Ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portions of this Ordinance

<b>Amendment Summary</b>		
<b>Date</b>	<b>Section</b>	<b>Amendment</b>
5/7/13	Section 5.C.	Removed restriction on using a facility to develop islands

Attest to be a true copy:

John M. Young  
Deputy Town Clerk  
Town of Phippsburg